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Scottish Information  
Commissioner

# Scottish Information Commissioner

**Annual Report & Accounts 2016/17**

**FOI: Changing Scotland's landscape**



# Overview

A summary of our purpose, key issues and key risks to the achievement of objectives and how we performed over the year.

## Performance summary



“It was with considerable sadness I stepped down as Scottish Information Commissioner...”

”

Rosemary Agnew

Former Commissioner's statement  
See page 3

425

appeals received in 2016/17

Performance Analysis: Appeals  
See page 6

First

We issued our first ever Enforcement Notices

Performance Analysis: Outcomes  
See page 21

74,213

FOI and EIR requests were reported by public authorities in 2016/17

3/4

of requests result in some or all of the information being disclosed

Performance Analysis: Monitoring and improving practice  
See page 22

15

Level 4 Interventions undertaken in 2016/17

Performance Analysis: Monitoring and improving practice  
See page 24

1 in 7

1 in every 7 appeals is for environmental information



Performance Analysis: Appeals  
See page 7

46%

of appeals are about local government



Performance Analysis: Appeals  
See page 11

72%

We closed 72% of our 2016/17 cases within 4 months

Performance Analysis: Investigations  
See page 14

100%

of attendees rated our roadshows as good or excellent

Performance Analysis: Monitoring and improving practice  
See page 25

“...We are committed to protecting our information rights in this post truth world”

Kevin Stewart MSP  
Minister for Local Government and Housing

Performance Analysis: Monitoring and improving practice  
See page 26

85%

Public awareness of FOI rights remains at its highest ever level



Performance Analysis: Monitoring and improving practice  
See page 30



Targets:  
10 targets met or exceeded

Performance Analysis: Investigations  
See page 15

3



Information Notices issued in 2016/17

Performance Analysis: Investigations  
See page 17

73%

of decisions found wholly or partly in favour of the requester

Performance Analysis: Outcomes  
See page 19

24/7

access to our new online appeal service

Performance Analysis: Raising awareness and improving access  
See page 32

94%

of authorities publish their Guide to Information online



Performance Analysis: Publishing information  
See page 34

20,000



We have responded to more than 20,000 enquiries since 2005

Performance Analysis: Enquiries  
See page 36

# Overview

## Acting Commissioner's statement



Welcome to the Scottish Information Commissioner's 2016/17 Annual Report and Accounts. I am the Commissioner's Head of Enforcement, but was appointed as Acting Commissioner on 1 May 2017, when Rosemary Agnew demitted office. As a result, this report focuses on the work carried out while Rosemary was still in post. Rosemary reflects on her time as Commissioner on the opposite page.

It's been another busy year for the office; the number of appeals to us may have reduced slightly this year but, as you'll see from the report, we've continued to find new ways to enforce and promote FOI, while recognising the need to achieve more with less.

Looking forward, the greatest risks to the work of the Commissioner are:

- Resources, not only in the Commissioner's office, but in the wider public sector, given the number of information requests being made each year.
- Fluctuations in work volumes. Much of the work of this office is outwith our control, so we need to find ever more flexible ways of working.

These risks are not new. But there are two new challenges which we will be facing over the next year:

- The judgment of the European Court of Human Rights in *Magyar Helsinki Bizottsag v Hungary* which introduces a two tier system of FOI – one for social watchdogs, journalists and academics and one for members of the public.
- Preparation for the new General Data Protection Regulation, which comes into force in May 2018, and which will change the way personal data is processed. As with all other data controllers, we need to make sure we're prepared to comply with the Regulation. However, the Regulation will also have a wider impact on the relationship between FOI and data protection.

Both will mean big changes for the way FOI operates in Scotland. The effects are currently uncertain, but requesters and public authorities will be looking to the Commissioner's office, as the regulator of FOI in Scotland, to lead the way and to give clear guidance.

My colleagues and I look forward to welcoming the new Commissioner, Daren Fitzhenry, to help us face these challenges.

**Margaret Keyse**  
Acting Scottish Information Commissioner



**Find out more**  
Read the Commissioner's Special Reports on  
- Failure to Respond;  
- Are the right organisations covered?; and  
- Proactive Publication  
at [www.itspublicknowledge.info/reports](http://www.itspublicknowledge.info/reports)

# Overview

## Former Commissioner's statement



than that, we want to improve access to information in support of a transparent and open Scotland.

One of my early decisions was that the Scottish Government should disclose whether or not they had taken legal advice about Scotland's position in Europe should the independence referendum return a "yes". Five years on and Europe is still an issue, but for different reasons, and discussion about a further independence referendum is again current. While some things about the world we live in may seem familiar, there have been some significant FOI developments and achievements. This will give you a flavour:

- Since 2013 authorities have submitted quarterly FOI statistical information to our portal which we collate and publish. We now have several years' worth of data that show us FOI is well-used and that request numbers are going up. This is a fantastic resource to have, and I am grateful to authorities for their constructive and co-operative approach.
- My team developed a more collaborative approach to good FOI practice, including: self-assessment tools, roadshows, outreach to a range of stakeholders, and training for new public authorities.
- We issued three special reports. The first on "Failure to Respond" resulted in us monitoring and reporting on the issue in a different way, which led, in turn, to improvements in authorities' response times. The underlying trend in appeals about this is downward (although there is still a way to go). The second report, on the extension of FOI, particularly through Ministerial use of section 5 powers, highlighted that FOI rights are eroding. While Ministers have

designated, or proposed further designation, the fact remains that rights to information have reduced since FOI was enacted, and there has been no real extension. The final special report, earlier this year, called for debate about the long-term sustainability of FOI and, in particular, the need for greater emphasis on proactively making information available.

- The team implemented and continue to develop its "interventions" approach. This focuses on active identification of poor practice and intervention with authorities to help them achieve lasting improvements. It is very much in keeping with our aims to add value and to improve the FOI experience for all.
- We introduced our mystery shopping approach to inform us about how well authorities are meeting their publication scheme duties, and how well FOI law is working.
- Finally, this year we launched an appeal portal, a new digital service which supports the user, at every step, to make a valid appeal.

All of this in addition to deciding appeals, with reduced resources and with an unwavering commitment to quality.

**Rosemary Agnew**  
Scottish Information Commissioner

# Overview

## Public functions

The Scottish Information Commissioner is responsible for promoting the observance by Scottish public authorities of freedom of information legislation and associated Codes of Practice.

In terms of Parts 3 and 4 of the Freedom of Information (Scotland) Act 2002 (the FOI Act) the statutory functions of the Scottish Information Commissioner are to:

- enforce the FOI Act, the Environmental Information (Scotland) Regulations 2004 (the EIRs) and the Codes of Practice issued under sections 60, 61 and 62 of the FOI Act
- provide guidance on the FOI Act and the EIRs to the public and promote the following of good practice by Scottish public authorities
- give advice to any person on these matters.

The Commissioner’s statutory functions include:

- approving Scottish public authorities’ publication schemes
- investigating, deciding and enforcing applications in relation to authorities’ handling of information requests
- assessing, promoting and monitoring practice
- giving advice and assistance about access to information under FOI legislation.

The Commissioner also investigates and decides appeals about complaints made under the INSPIRE (Scotland) Regulations 2009 where the complaint involves a refusal to grant full public access to a spatial data set or service.

“Your office is providing an invaluable service for the public”  
FOI requester

**Terms used**  
**FOI** Freedom of information  
**FOISA/ FOI Act** The Freedom of Information (Scotland) Act 2002  
**EIRs** The Environmental Information (Scotland) Regulations 2004

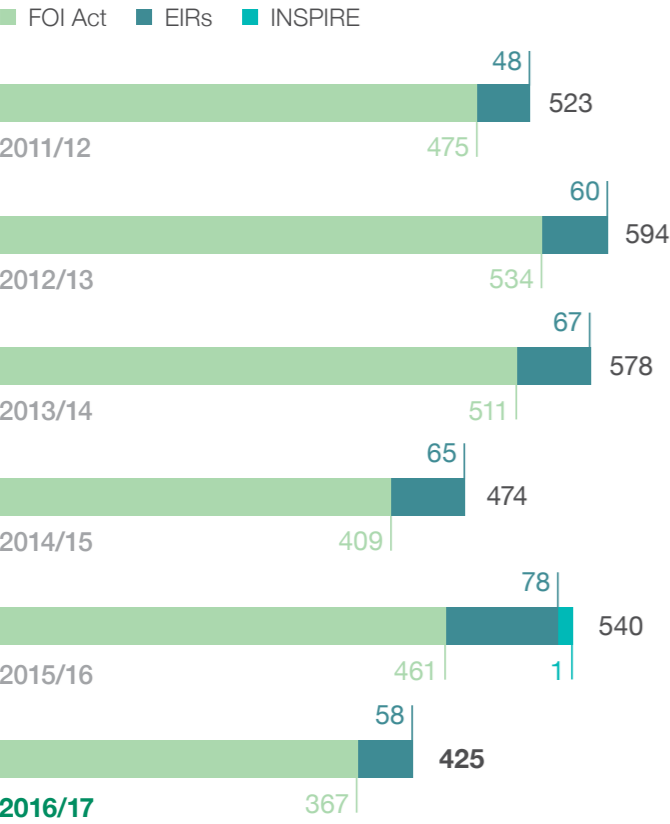
**i Find out more**  
Read more about the legislation at [www.itspublicknowledge.info/law](http://www.itspublicknowledge.info/law)



# Performance Analysis: Appeals

Anyone who is unhappy with an authority’s response to an information request has an enforceable right of appeal under FOI law.

## Total appeals by legislation



## Appeals decreased by 21%

This year there were fewer appeals from two groups: prisoners and the media (see page 8).

425 **total** appeals in 2016/17

21% **lower** than last year



**Did you know?**  
0.6% of the 74,213 FOI requests made in Scotland last year were appealed to the Commissioner

## % of appeals made under the EIRs



One in seven appeals concern requests for environmental information

Though the proportion of EIRs appeals received was consistent with previous years, it’s low compared to FOI Act appeals.



**Did you know?**  
The EIRs cases we investigated this year included requests about:

- planning decisions about the T in the Park festival's move to Strathallan Castle Estate and the effect on osprey nest sites (Decision 128/2016)
- illegal shellfish diving (Decision 129/2016)
- the contract between Scottish Borders Council and a waste management company for a facility that was cancelled at significant cost to the council (Decisions 078/2016, 097/2016 and 220/2016)
- a conservation area for harbour porpoises in the Moray Firth (Decision 187/2016)
- the redevelopment of the Royal Edinburgh Hospital Campus (Decision 011/2017).



**Find out more**  
The Commissioner’s online appeal portal is found at [www.itspublicknowledge.info/appeal](http://www.itspublicknowledge.info/appeal)



**Find out more**  
Details about who made appeals this year is at page 8



**Find out more**  
Learn more about the EIRs at [www.itspublicknowledge.info/eirs](http://www.itspublicknowledge.info/eirs)

# Performance Analysis:

## Appeals continued

### Who appeals?

	2014/15	2015/16	2016/17
Public and other <sup>1</sup>	59%	61%	66%
Media	14%	20%	14%
Prisoner	8%	7%	4%
Solicitor	2%	0%	1%
Elected representative (MP, MEP, MSP, councillor)	3%	3%	1%
Commercial / private enterprise	2%	4%	7%
Voluntary / campaign organisation	4%	1%	4%
Academic / student	1%	0%	3%
Trade union	1%	0%	1%
Solicitor (on behalf of client)	6%	4%	0%

Some charts in this report sum to 99% or 101% due to rounding.

#### Voluntary / campaign organisations appeals

Appeals from voluntary and campaign organisations have risen from three last year to 17 this year. We see this as a positive change as access to information is a valuable tool for organisations who often promote human, equality, consumer and other rights. To find out more about how the third sector uses FOI, see [www.itspublicknowledge.info/voluntarysector](http://www.itspublicknowledge.info/voluntarysector).

#### Prisoner appeals

Appeals from prisoners fell to their lowest ever level this year. The number of appeals from this group has been steadily reducing since 2012/13. At the same time, more prisons are now covered by FOI legislation than before. In September 2016, a Section 5 Order under the FOI Act brought Scotland’s two private prisons, HMP Addiewell and HMP Kilmarnock, in scope. Both newly designated prisons embraced FOI positively, and HMP Kilmarnock undertook a specific project to promote FOI rights to prisoners and their families. The volume of requests received by the new prisons has so far been low: HMP Addiewell reported eight FOI requests in the first seven months of designation, and HMP Kilmarnock just three.

Appeals from voluntary and campaign organisations are increasing

66% Most appeals still come from members of the public

3% There was a small increase in appeals from academics and students

The proportion of appeals from the media fell back to previous levels. 2015/16 was an election year and had also seen an increase in appeals from journalists about “PREVENT”, i.e. the duty to prevent people from being drawn into terrorism.

We changed the way we record cases coming via solicitors. Where a solicitor has made an appeal on behalf of a client, we now record the type of client they represent. Of the 19 appeals via solicitors, in five cases they were acting for private individuals, in 11 cases for commercial or private enterprises and in three cases for voluntary or campaign organisations. This gives a clearer picture of who is making appeals.

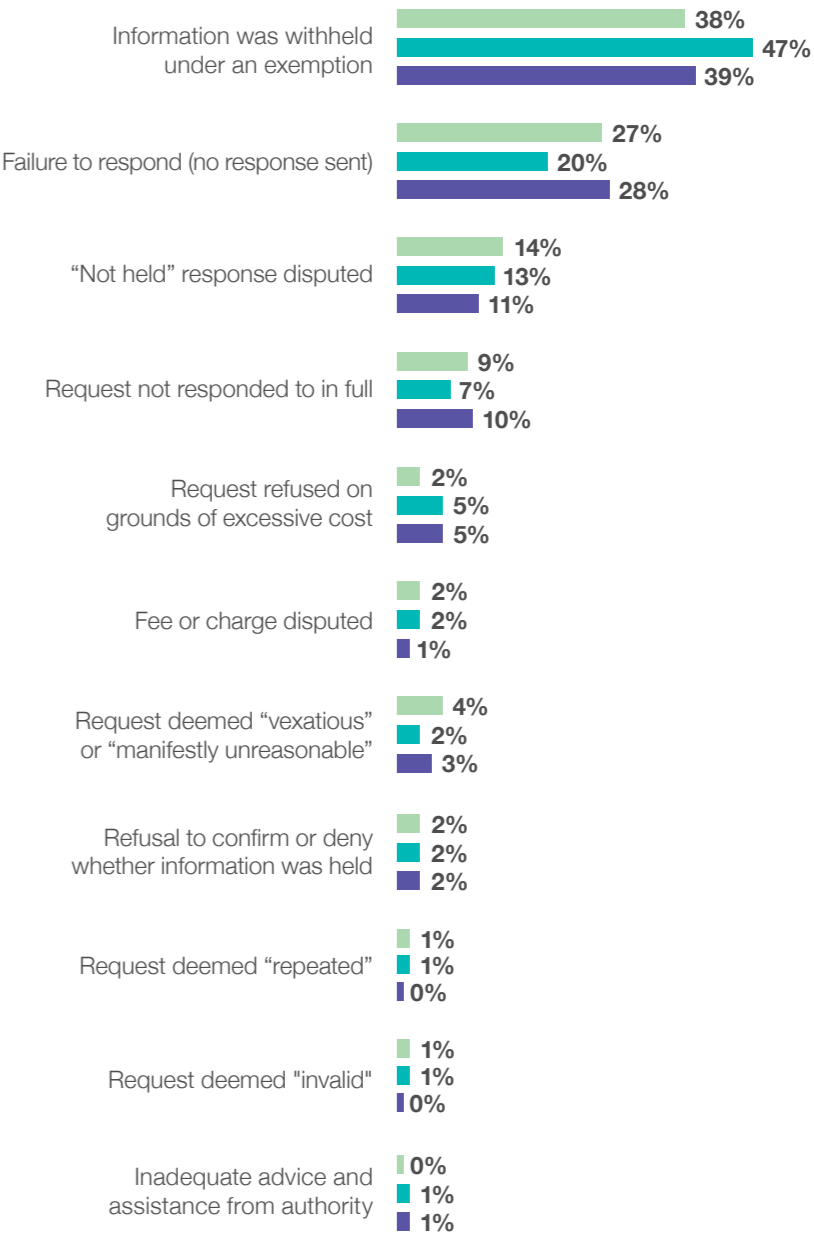
### Reasons for appeals

2014/15 2015/16 2016/17

The most common reason for requesters appealing to the Commissioner is that they disagree with the reasons given for withholding the information. However, this accounts for a lower proportion of appeals compared to last year, because there was an increase in the proportion of cases where the authority simply failed to respond to the request.

21% of appeals dispute an authority’s claim that either it doesn’t hold the information, or that it has disclosed all the information it holds. These cases can be time consuming because investigators have to establish whether information searches have been carried out adequately. They also have to look at the case in context of the authority’s records management practices and delays may occur if authorities do not co-operate sufficiently with our requests for further searches.

For more information about failure to respond appeals, see page 13.



**Find out more**  
See the statistics submitted by all authorities in Scotland at <https://stats.itspublicknowledge.info/>

<sup>1</sup> “Public and other” represents all individual members of the public with no identified affiliation to an organisation or group.



**Find out more**  
See page 23 for more about our interventions

# Performance Analysis:

## Appeals continued

### What are appeals about?

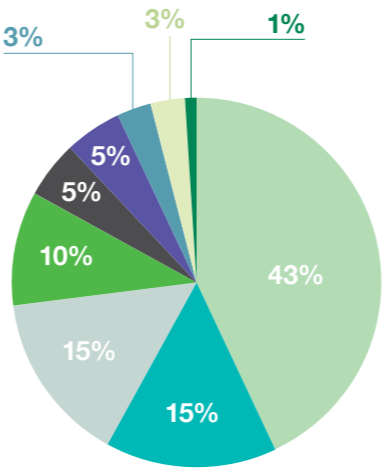
FOI gives people the right to ask for any information held by public authorities. The most common subjects of appeals change from time to time and are influenced by media and political interest. If there is a big story in the news, there are often FOI requests for related information.

The 10 most common subjects for appeals to the Commissioner last year were:

10 most common appeal categories	2015/16	2016/17
1. Administration of the authority	18%	21%
2. Safety and crime	21%	13%
3. Planning	6%	7%
4. Commercial activities and contracts	5%	7%
5. Transport and roads	4%	6%
6. Employees	5%	6%
7. Care (children & older people)	4%	5%
8. Health	4%	4%
9. Education and learning	4%	4%
10. Court / civil legal matters	2%	4%
(Other)	27%	23%

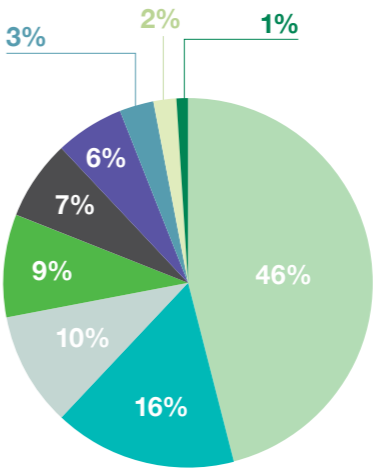
### Which sectors' responses are appealed?

2015/16



- Local government
- Scottish Government and its agencies
- Police
- Other public authorities
- The NHS
- Non-ministerial office holders
- Bodies not covered by the FOI Act<sup>2</sup>
- Educational institutions
- Publicly-owned companies
- Culture & leisure trusts
- Bodies designated under section 5<sup>3</sup>
- Scottish Parliament

2016/17



### Almost half of FOI appeals are about local government

As in previous years, local government was the subject of the largest number of appeals of any public sector group. In 2016/17 local government reported receiving 46,684 requests (63% of all requests made in Scotland), so it's not surprising that they account for the largest proportion of appeals (46%: 194 appeals).

Last year we reported an increase in appeals about Police Scotland (from 5% to 15%) and that the Commissioner was working with the police to improve their performance. Appeal rates have begun to fall following an intervention and a roadshow for the police.

<sup>2</sup> Some organisations not covered by the FOI Act may fall within the wider scope of the EIRs, e.g. housing associations.

<sup>3</sup> Ministers can use section 5 to bring bodies in scope of FOI that are not usually thought of as public sector organisations. Section 5 bodies include leisure and culture trusts, special and grant aided schools, private prisons and secure accommodation providers.



#### Find out more

Advice on requesting any information from Scottish public bodies is available at [www.itspublicknowledge.info/yourrights](http://www.itspublicknowledge.info/yourrights)



#### Find out more

To find out what the decisions we issue are about, see page 20



#### Find out more

For a detailed breakdown of appeals about individual authorities, see the public authority spreadsheets at [www.itspublicknowledge.info/annualreports](http://www.itspublicknowledge.info/annualreports)



#### Did you know?

The police sector includes Police Scotland and the Scottish Police Authority



#### Did you know?

The local government sector includes councils, licensing boards, and local government assessors


# Performance Analysis:


## Enforcement Performance: Investigations

The Commissioner can only investigate valid appeals that meet specific legal criteria.

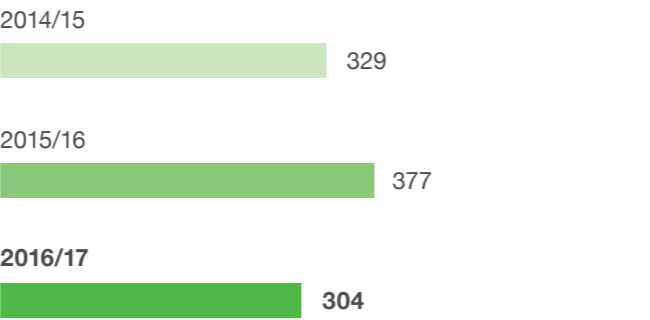
### A valid appeal must:


- concern an information request made to an organisation covered by FOI law ✓
- be made after the requester has asked the organisation to review its handling of the request ✓
- explain why the requester is unhappy with the review response ✓
- be made after a review response is received, or once 20 working days has passed (whichever is sooner) ✓
- be made within six months of the review response ✓

 Our online appeal service launched in November 2016. It helps the requester make a valid appeal by giving 24/7, real-time advice.

 If an appeal isn't valid, we give the requester advice on how to take their case forward.

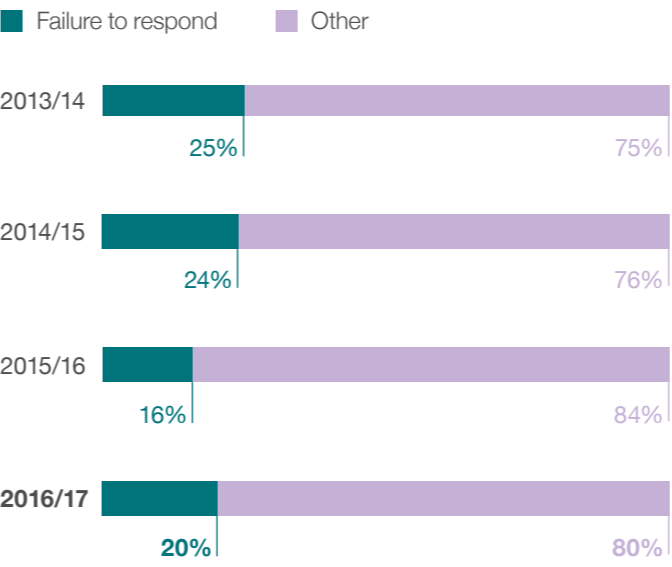
### Total number of valid appeals



 **Invalid appeals:** Some of the appeals received each year are appeals that we cannot investigate, e.g. if the organisation that has been asked for information is not subject to FOI law, or the requester has not provided their name and address in the request, or in the appeal. These are called “invalid” appeals.

Our new online appeal portal, launched in November 2016, reduces the likelihood of appeals being invalid. It gives the requester advice about how to make an appeal and provides alerts when, for example, an appeal is premature. We will be monitoring the impact of the new service on appeal volumes, particularly the proportion of valid and invalid appeals.

### Proportion of valid FTR appeals



### Failures to respond (FTRs)

We set a target of reducing failure to respond appeals to 15% of all valid appeals by 2020. We made significant progress against this target last year, almost reaching the four year target in 12 months. While the percentage of valid failure to respond appeals increased to 20% in 2016/17, we continue to be optimistic about achieving the four year target.

The main reason for the significant increase is the number of such appeals about local authorities. There are 32 local authorities in Scotland, and 17 of them had FTRs this year. Most only had one or two, though some local authorities had more, e.g. East Dunbartonshire Council had eight. We raised this with them as an intervention (see page 23).

Previous research shows that journalists were more likely to suffer from failures to respond, yet this year we have seen a reduction in appeals from the media (see page 8).

“Failing to respond can ultimately undermine relationships between citizens and state that are really important. I just think it’s rude as well”  
Rosemary Agnew



**What's next?**  
Since the failure to respond Special Report in 2014, there has been a downward trend in the proportion of our valid appeals for this reason. We continue to monitor trends closely and to promote a strong message about responding on time

# Performance Analysis:

## Enforcement Performance: Investigations continued

### Investigations over four months

The FOI Act requires the Commissioner to report the number of cases that take longer than four months. We aim to resolve the majority of our cases within this period, although our more complex cases will often take longer.

Appeals closed within 4 months	2014/15	2015/16	2016/17
Cases closed without investigation			
4 months or fewer	148	163	121
More than 4 months	4	0	0
Sub-total	152	163	121
Cases closed during investigation			
4 months or fewer	83	93	63
More than 4 months	12	24	15
Sub-total	95	117	78
Cases closed with decision			
4 months or fewer	166	118	141
More than 4 months	73	113	111
Sub-total	239	231	252
All cases			
Total 4 months or fewer	397	374	325
Total more than 4 months	89	137	126
Total cases closed	486	511	451

Our performance was achieved alongside:

- a significant reduction in the number of investigators during the year (from 8.3 to 6.9 full time equivalent)
- investigators taking forward new work on interventions and preparing Enforcement Notices<sup>4</sup>
- a significant increase in appeals just before the end of the previous reporting year: large fluctuations in volumes of appeals impact on management of the caseload.

We used investigator resources in two new ways:

- We piloted the appointment of an additional part-time Validation Officer to increase resources at the first stage of processing.
- We increased the capacity of the Policy and Information Team by a full-time member of staff, directing more resources to improving authority practice and promoting rights to the public.

<sup>4</sup>We issued our first ever Enforcement Notices this year. See page 21 for more information

### 72% of cases were closed within 4 months



**Case closure times**  
We completed 72% of our cases within 4 months, against a challenging target of 75%, set in response to our performance in 2015/16 (73% completion of cases).

We met our target to close 85% of cases within 6 months, and 100% of our cases were closed within 12 months. The average age of open cases at the end of the year was much lower than last year (2.59 months, compared to 3.57 months in 2015/16).

### Case closure times

Our target exceeded ● Our target met ● Our target not met ●

% of cases closed	Our target	Our performance
All appeals		
4 months or fewer	75%	70%
6 months or fewer	85%	85%
12 months or fewer	97%	100%
Average closure time	17.8 weeks or fewer	17.3 weeks
Validation of appeals		
1 month or fewer	80%	84%
2 months or fewer	90%	94%
3 months or fewer	97%	96%
Failure to respond appeals		
1.5 months or fewer	65%	75%
4 months or fewer	100%	100%
Substantive appeals		
4 months or fewer	50%	51%
6 months or fewer	75%	75%
12 months or fewer	95%	100%



**Our performance targets**  
Our investigations performance is assessed against 12 challenging case closure targets. In 2016/17, our performance:

- exceeded seven targets
- met three targets
- narrowly missed two targets

We missed our target of deciding whether all the appeals we received were valid in less than 3 months by 1%. We had some complex cases where we had to come to a determination as to whether a body was subject to the EIRs before accepting (“validating”) the appeal. This can take some time, particularly where the body in question does not consider it is subject to the EIRs and is not used to working with us.



Thank you very much for your extremely diligent handling of these matters which has helped to bring about a compromised solution to the complaints



FOI requester



**Find out more**  
Our investigation procedures and Enforcement Policy are available at [www.itspublicknowledge.info/briefings](http://www.itspublicknowledge.info/briefings)

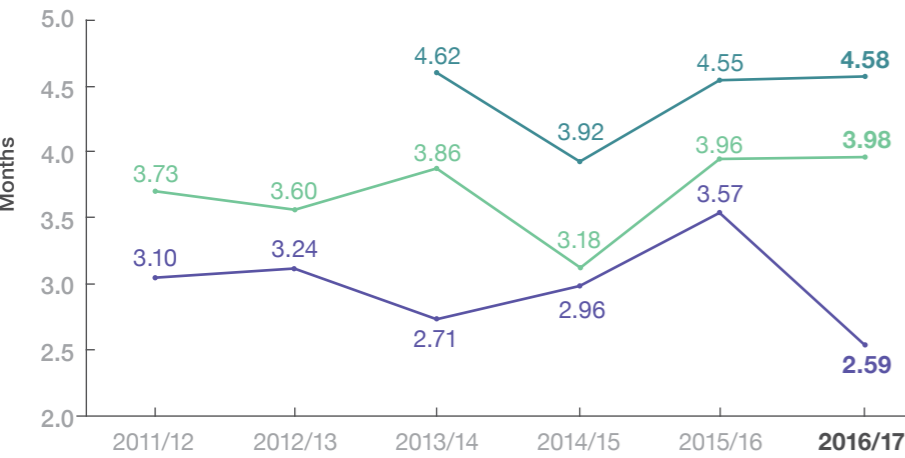


**Advise and assist**  
In line with our procedures, our staff keep parties informed on the progress of investigations

# Performance Analysis:

## Enforcement Performance: Investigations continued

### Average age of open and closed cases



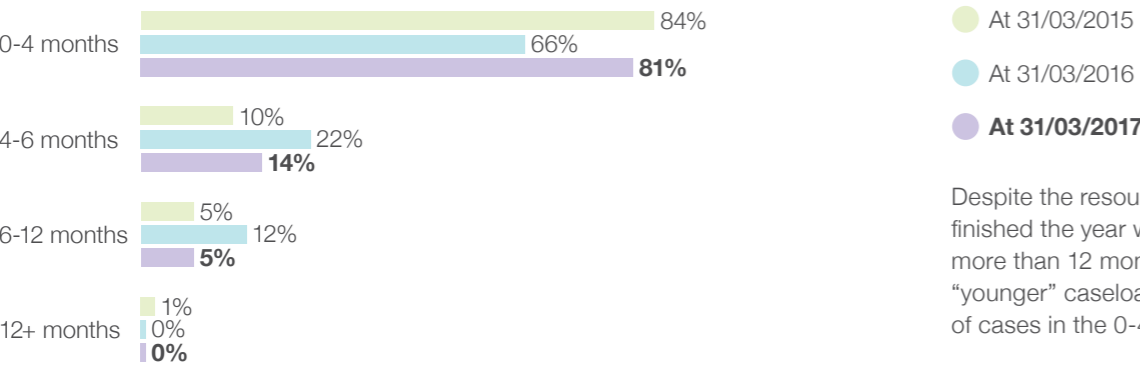
**Closed during the year (excluding failures to respond)**

**Closed during the year (all cases)**

**Open at end of the year**

The average age of cases closed during the year remained at the higher level seen last year, as a result of the changes to our Investigating Officer resource, and additional investment in proactive publication and new work like Interventions and Enforcement Notices.

### Age profile of open cases (%)



Despite the resource challenges, we finished the year with no open cases more than 12 months old, and an overall “younger” caseload (a higher proportion of cases in the 0-4 month category).

**Quality assurance:** We continued our Quality Assurance assessments of investigations in 2016/17. We assessed 21 cases and found that compliance with our Investigations Handbook was very high. For example:

- Informal resolution was considered in all of the cases assessed.
- In 12 of the 20 substantive cases considered, good practice issues were communicated to the public authority.
- There were no issues with the quality of our communications.

**Find out more**

We publish a wide range of performance data on a quarterly basis, at [www.itspublicknowledge.info/operationalperformance](http://www.itspublicknowledge.info/operationalperformance)

**Improving performance**

Our full Performance and Quality Framework objectives are available at [www.itspublicknowledge.info/performanceframework](http://www.itspublicknowledge.info/performanceframework)

**What's next?**

In 2017/18 we will continue to quality assure investigations and will review how the work is carried out

### Information Notices

Information notices are an important tool for the Commissioner, particularly when public authorities either delay or refuse to give us the information we need to carry out an investigation.

We issued three Information Notices during 2016/17:

**East Dunbartonshire Council**

Issued 6 March 2017. We wrote to the council twice to determine what information it held at the time it received the request, but the responses we received were unclear and insufficient to allow us to come to a decision on the appeal, so we issued an Information Notice.

**Dumfries and Galloway Council**

Issued 16 January 2017. The council refused to provide the information we needed for the investigation, so we had to issue the notice.

**Police Scotland**

Issued 17 August 2016. We twice asked the police to give us submissions on the case. We received no response, so issued an Information Notice.

Thank you for the great care which has gone into making this decision

FOI requester

**Find out more**

Read our Enforcement Policy and Investigation Procedures at: [www.itspublicknowledge.info/briefings](http://www.itspublicknowledge.info/briefings)

# Performance Analysis: Outcomes

An investigation is normally concluded in one of two ways: it is either resolved to the satisfaction of the requester or the Commissioner issues a legally-binding Decision Notice, setting out any action to be taken.

## Appeal outcomes by stage

● 20% of appeals in 2015/16 were invalid for one of these reasons. In 2016/17 that had reduced to 16%.

The online appeal service automatically identifies when an appeal is likely to be invalid for any of these reasons. The service alerts the user to the issue and gives advice on what they need to do to make their appeal valid. Users can save their appeal and return to it later.

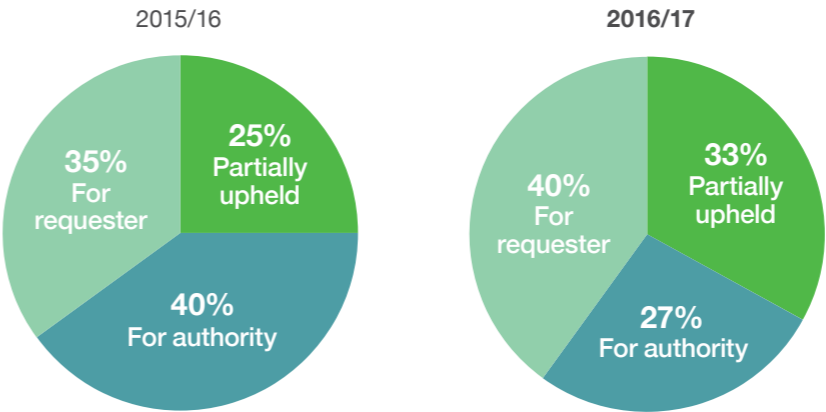
○ 2% of our total caseload in 2015/16, and 2% of our total caseload in 2016/17, was invalid for one of these reasons. Although the online appeal service does not block these appeals, it does offer advice to requesters about why their appeal may be invalid.

● Compared to 2015/16, we issued more decision notices in 2016/17.

	2015/16	2016/17
Brought forward from previous year	94	123
New appeals	540	425
Total caseload	634	548
Appeals closed in the early stages		
Reason for closure:		
Premature or "out of time"	27	29
Withdrawn or abandoned	23	19
Excluded under s48 <sup>5</sup>	5	9
Invalid format <sup>6</sup>	47	18
Body not subject to FOI	10	3
No request for review made	33	30
No request to public authority	18	13
Sub-total	163	121
Appeals closed during investigation		
Reason for closure:		
Abandoned	11	6
Resolved	105	72
Application frivolous or vexatious	1	0
Sub-total	117	78
Appeals closed with decision		
Decision outcome:		
For authority	92	67
For requester	80	102
Partially upheld	59	83
Sub-total	231	252
Total appeals closed	511	451
Total appeals carried forward to next year	123	97

## What does the Commissioner decide?

73% of decisions issued this year found wholly or partially in favour of the requester. Last year, it was 60%.



## Valid cases closed

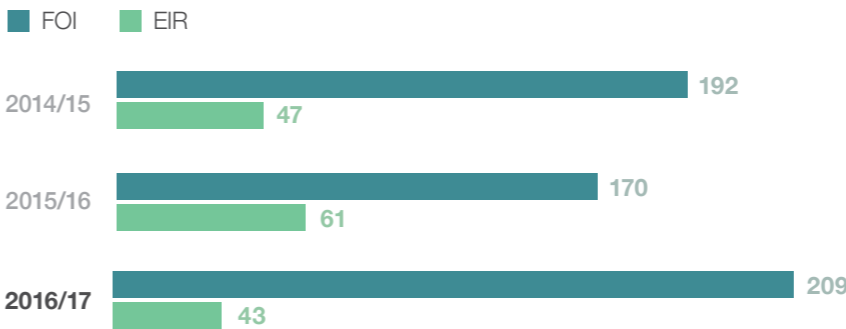
The number of valid cases closed, whether by decision or resolution, decreased by 5%



## Decisions issued by legislation

### We issued 43 decisions under the EIRs

The EIRs accounted for 17% of the Commissioner's decisions. Last year saw a peak in the proportion of EIRs cases. This year it has returned to normal levels.



“I... am delighted with the outcome. What an amazing amount of work you have done ... I have found [your staff] a breath of fresh air...”

FOI requester



**Improving performance**  
Authorities and requesters rely on our briefings so it's really important they're up to date and easy to use. During 2016/17, we updated 20 of our briefings



**What's next?**  
In 2017/18, we'll focus on improving our EIRs guidance, including separate guidance for each of the exceptions

<sup>5</sup>Under section 48 of the FOI Act the Commissioner cannot investigate cases involving herself, procurators fiscal or, in most cases, the Lord Advocate.

<sup>6</sup>An appeal will be invalid if it doesn't comply with the requirements of section 47 of the FOI Act (see page 12).



**Improving performance**  
All the lessons to be learned from our decisions are published in our weekly Decisions Round-up

# Performance Analysis: Outcomes

## continued

### The Commissioner’s decisions

Our 252 decisions covered an enormous range of issues. If something is in the news, the chances are we will be investigating a related information request. For example, we issued decisions about:

PREVENT guidance (for preventing radicalisation)
Misuse of Blue Badges for disabled parking
Creation of Scottish Monetary Fund in the event of Scottish independence
2015 Higher maths exam
Police Scotland budget
Changes to Police Scotland’s procedures following a fatal M9 crash
Donald Trump’s GlobalScot status and correspondence with Trump International Golf Links Scotland
Scottish Government Poverty Advisor
Scottish Child Abuse Enquiry
‘Named Person’ provisions in Children and Young People (Scotland) Act
Meetings between Nicola Sturgeon and Theresa May



#### Appeals to the Courts

If either party to an appeal thinks that the Commissioner has made a legal error in a decision, they can appeal to the Court of Session. Of 252 decisions issued, 1% (3 cases) were appealed to the court in 2016/17. Two were brought by prisoners and one by Police Scotland.

In one case we conceded an appeal because we accepted that one part of our decision (about consent) was unclear. As we conceded at the earliest possible stage of the court proceedings, the costs incurred were low.

One case has been “sisted” (paused) by the court to allow the requester to apply for legal aid.

The remaining case involves a request for the number of Covert Human Intelligence Sources Police Scotland has had since it was created. The Court found in favour of the Commissioner in June 2017.

The Commissioner’s policy is to seek legal expenses following the successful defence of an appeal where appropriate. This recognises that the Commissioner is a publicly-funded official with a responsibility for good financial management.

### Enforcement Notices

We issued our first ever Enforcement Notices. They all related to a failure to comply with the publication scheme duty and came about as a result of our Interventions work.

- Four Enforcement Notices against publicly owned companies (Ayr Renaissance LLP, SEBSED Ltd, Highland Birchwoods and Kirkintilloch’s Initiative Ltd)
- Two Enforcement Notices against schools that were made subject to FOI legislation in September 2016 (Daldorch House School and Sycamore School)

### Compliance with our Decision Notices

Since FOI law came into force in 2005, the Commissioner has never had to refer non-compliance to the Court of Session. This year, we came the closest we ever have to referring a failure to comply with a Decision Notice. East Dunbartonshire Council complied late with several Decision Notices. Following an intervention, including a meeting with the Chief Executive and Chief Solicitor of the Council, we secured the desired compliance and did not need to refer the matters to the Court.



...can I record my thanks for the effort expended by yourselves... It is comforting to think that your organisation exists to provide a balanced challenge where required



FOI requester



#### Find out more

Sign up to receive our Decisions Round-up at [www.itspublicknowledge.info/signup](http://www.itspublicknowledge.info/signup)



#### Find out more

Read all of our appealed decisions on our decisions database, at [www.itspublicknowledge.info/decisions](http://www.itspublicknowledge.info/decisions)



#### Find out more

We publish the costs of each of our court cases at [www.itspublicknowledge.info/expenditure](http://www.itspublicknowledge.info/expenditure)



#### Improving performance

Our enforcement notices are published at [www.itspublicknowledge.info/enforcement](http://www.itspublicknowledge.info/enforcement)



#### Find out more

Learn more about our Interventions Procedures, on page 23

# Performance Analysis:

## Monitoring and improving practice

The Commissioner is responsible for promoting good practice and compliance with FOI law by public bodies, and ensuring that the public are aware of their FOI rights.

### Statistical data

The Commissioner’s work is informed by a range of data from our work, including appeals, enquiries and feedback from stakeholders. We also increasingly draw on quarterly statistical data submitted by public authorities. Through our statistics portal we collate FOI data from Scottish public authorities and make it freely available for anyone to use as open data. It provides a comprehensive picture of FOI and EIR activity across Scotland.

#### Public authority statistical data: highlights

	2014/15	2015/16	2016/17	% Change from 2015/16
Total reported requests	66,767	68,156	74,213	↗ 9%
FOI requests	59,571	60,567	66,467	↗ 10%
EIR requests	7,196	7,589	7,746	↗ 8%
% EIR requests	11.3%	10.5%	10.4%	–
FOI cost refusals	2,028	2,057	2,453	↗ 19%
% (of total) FOI cost refusals	3.4%	3.4%	3.7%	–
Vexatious, repeated or manifestly unreasonable refusals	242	315	285	↘ 10%
% vexatious, repeated or manifestly unreasonable refusals	0.4%	0.5%	0.4%	↘ 0.1%
Failure to respond	452	295	583	↗ 98%
% failure to respond	0.7%	0.4%	0.8%	↗ 0.4%
Response: full disclosure	40,285	39,066	41,615	↗ 7%
Response: partial disclosure	10,024	11,790	13,682	↗ 16%
% full or partial disclosure	75%	75%	75%	–
Response: information withheld	5,399	5,345	5,137	↘ 4%
Response: information not held	5,668	6,328	6,872	↗ 9%
Total reviews	1,716	1,966	1,816	↘ 8%
% of requests reviewed	2.6%	2.9%	2.4%	↘ 0.5%
Appeals to the Commissioner	474	540	425	↘ 21%
% of requests appealed	0.7%	0.8%	0.6%	↘ 0.2%

0.6% of recorded information requests are appealed to the Commissioner

45%

Worryingly, there was a rise in the number of requests that were not responded to: almost double the figure for last year. 261 (45%) of these failures to respond were reported in authorities’ statistics for the last quarter.

75%

Authorities report that three quarters of information requests result in some or all of the information being provided to the requester.



The most common reported reason for refusal is because the authority doesn’t hold the requested information. If an authority doesn’t hold information but staff know which authority does, they should give the requester contact details for the other authority.



**Find out more**  
The full statistical database is available at <https://stats.itspublicknowledge.info>

### Practice interventions

The Commissioner’s Intervention Procedures set out when and how we will intervene to address an authority’s FOI practice. We decide when to intervene based on:

- non-compliance issues we note during our case work, and
- trends in the data submitted by authorities to the Commissioner’s statistics portal.

Intervention levels:

#### Level 1

Issue ● Action ●

Minor failure to follow good practice

Staff may alert the authority to the issue and propose remedial action

#### Level 2

Recurring practice failure

Senior staff raise the issue with authority and propose remedial action

#### Level 3

Serious systemic practice failure

Authority required to put in place an action plan to address the failure

#### Level 4

Consistent, ongoing failure to comply with FOI law and guidance

The Commissioner will use the full range of powers to address the problem. May include practice recommendations, assessments or enforcement notices

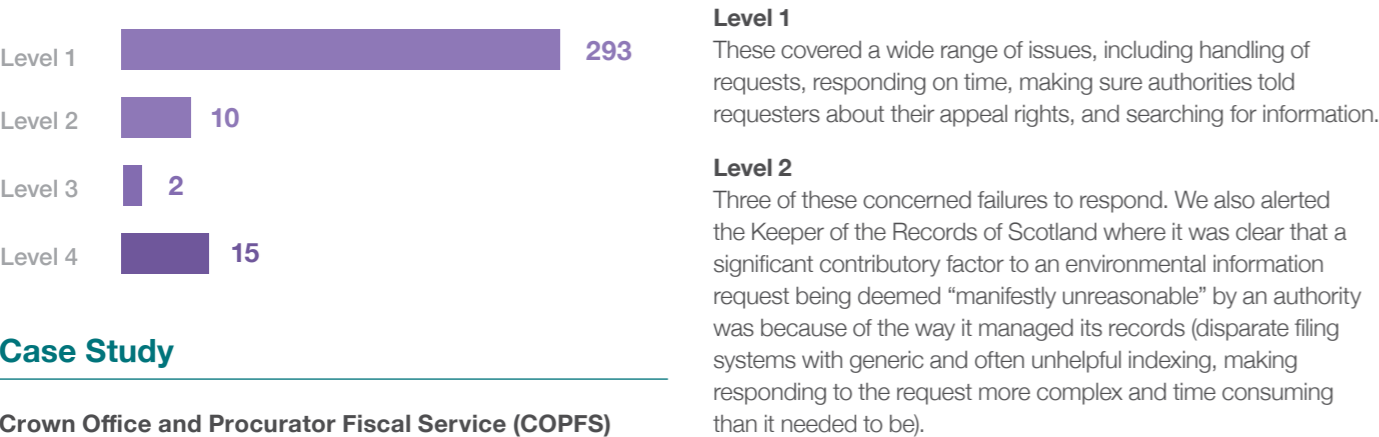


**Find out more**  
You can find out more about our Self-assessment toolkits on page 29

# Performance Analysis:

## Monitoring and improving practice continued

### Number of interventions 2016/17



### Case Study

**Crown Office and Procurator Fiscal Service (COPFS)**  
Towards the end of 2015, a number of people contacted the Commissioner to express concern about late responses from COPFS. We raised a Level 2 Intervention and met with COPFS in January 2016. They told us about changes which had already been made or were planned to improve compliance with timescales.

We provided advice and resources to COPFS to support them in making improvements. We met again in November 2016. By that time, there had been a huge improvement, in some cases from below 65% responses on time to above 90%.

“COPFS recognises the importance of compliance with FOISA and as the Commissioner has acknowledged, were already seeking to address known issues. We found it extremely helpful to discuss the challenges of dealing with what can be complex requests and were grateful for advice and resources which assisted in refining our processes. We are pleased with the substantial progress made.”

COPFS

**Level 1**  
These covered a wide range of issues, including handling of requests, responding on time, making sure authorities told requesters about their appeal rights, and searching for information.

**Level 2**  
Three of these concerned failures to respond. We also alerted the Keeper of the Records of Scotland where it was clear that a significant contributory factor to an environmental information request being deemed “manifestly unreasonable” by an authority was because of the way it managed its records (disparate filing systems with generic and often unhelpful indexing, making responding to the request more complex and time consuming than it needed to be).

**Level 3**  
**Police Scotland: effectiveness of searches**  
Police Scotland has agreed to review its own FOI practice, using Module 2 of the Commissioner’s Self-assessment Toolkit *Searching for and locating information* and share their findings and subsequent action plan with us. We also raised issues about records management practice, the use of the excessive costs provision to refuse requests and maintaining the publication scheme. The number of appeals about Police Scotland has fallen following the Commissioner’s intervention, see page 11.

**Scottish Government: responding on time**  
The Scottish Government has agreed to adopt targets to respond to 85% of requests and reviews within statutory timescales. The targets will be raised in subsequent years to achieve 95% of responses on time within two years. The Government will report its performance each month to the Commissioner until the end of 2017.

**Level 4**  
15 authorities were referred internally for potential enforcement action. In all cases, the reason for referral was non-compliance with the publication scheme duty.

Five of the bodies were special or grant-aided schools. 10 bodies were thought to be wholly publicly-owned companies which had not responded to repeated reminders from the Commissioner. In all but four of these cases, the company either complied before enforcement action was initiated, or confirmed to our satisfaction that it is not in fact wholly publicly-owned, and, therefore, not subject to the FOI Act.

Enforcement Notices were issued to the remaining four publicly-owned companies, and to two of the schools.

### Regional roadshows

For the third year running, we provided roadshows in regional areas, taking the Commissioner’s office to people who wouldn’t otherwise have face-to-face contact with the Commissioner and her staff. We visited three areas in 2016/17: Inverness, Edinburgh and Tayside.

**Public authority roadshows**  
We offered bespoke training to the staff of regional public authorities including councils, health boards, universities and colleges. In each area, the Commissioner met elected members and senior officials to explore local issues around access to information.

**Inverness 42 delegates from 14 public bodies**  
**Edinburgh 91 delegates from 34 public bodies**  
**Tayside 61 delegates from 13 public bodies**

- 100% rated it “excellent” or “good”
- 97% would recommend it to others
- 95% felt better equipped as a result of the roadshow
- 97% felt more confident as a result of the roadshow

**Civil Society Roadshows**  
We ran an event in Edinburgh for third sector groups on their rights, and how and when they might use them. 18 people attended.

- 100% rated it “excellent” or “good”
- 100% would recommend it to others
- 100% have a better understanding of their rights
- 93% can see how FOI would be useful to them
- 93% would be more likely to use FOI in the future

**What’s next?**  
We will deliver a further three roadshows and new roadshow resources in 2017/18

**Got a question?**  
What would you like to see in our roadshow programme? Where would you like us to visit? Tell us at: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

# 100%

We exceeded our target of 80% of participants rating our roadshow events as “good” or “excellent”



“I was here to think more strategically about what we might do, and that was achieved”  
Manager



“The examples of when/how FOI has been used successfully were particularly powerful”  
Delegate

# Performance Analysis:

## Monitoring and improving practice continued

### Conferences, events and networks

The Commissioner and her staff organise and support a wide range of events and engagements, aimed at improving awareness, sharing practice and encouraging networking.

#### Centre for FOI Practitioners' Conference

Our Centre for FOI Practitioners' Conference provided a range of learning opportunities for FOI staff, with practical workshops covering FOI good practice, proactive publication, knowledge sharing, and requests for personal data.

- 95% told us they had learned something to help them do their job.
- 100% of delegates rated the conference as "good" or "excellent".
- 98 delegates attended from across the public sector and beyond.



“  
Helpful and informative  
  
This conference just gets better and better – thank you  
2016 delegates

#### Holyrood FOI Conference

In December, we supported the *Towards a more open Scotland* FOI Conference organised by Holyrood Conferences. The event attracts participants from public and third sectors, academics and legal professionals.

This annual conference is an important platform for sharing experiences, challenges and opportunities. This year's event learned about developments in openness in the European Union, open data and re-use of public sector information.



“  
...We are committed to protecting our information rights in this post truth world  
Kevin Stewart MSP, Minister for Local Government and Housing

A regular part of the annual business calendar. You always learn something new  
2016 delegate



**Did you know?**  
After hosting a study visit from the Information Commissioner of Albania last year, the Commissioner delivered the keynote address at an Albanian conference on the Right to Information and Good Governance

#### Shetland Islands “mini-roadshow”

In October, the Commissioner and Head of Enforcement travelled to Lerwick to present a mini version of our regional roadshows.

This gave us an opportunity to focus on some of the issues faced by smaller communities, for example the difficulty of anonymising personal data so that it's suitable for disclosure under FOI in a small population.



#### Data Impact 2016

The Commissioner participated as a panellist at this exciting event, emphasising the importance of knowing first what information you have and the value of it.

This is the first step in making the information meaningful to the recipient. FOI is not just about the right to ask, but about the right to know.



**Improving performance**  
The Commissioner spoke at 14 events during the year, including the European Commissioners' Conference in Berlin, a TAIEX Workshop on the Interaction between FOI and privacy in Macedonia and a BBC FOI media session in Glasgow

# Performance Analysis:

## Monitoring and improving practice continued

### Learning from experience

#### Decisions Round-up

The Commissioner published a regular Round-up of the key learning points from her 252 decisions, along with learning from resolved cases.



#### FOI Scotland Forum, Knowledge Hub

We launched the FOI Scotland Forum on Knowledge Hub in May 2016. It provides a way for FOI practitioners from all parts of the public sector to exchange knowledge and seek advice from one another about good practice. It is a key part of the Commissioner's strategy to support learning and development.

#### 108 members from a range of different public sectors

Discussion threads covered:

- FOI policies
- advice for new bodies
- tracking and monitoring systems for requests



- **41** round-ups issued in 2016/17
- Published online
- Sent by email to over **1,000** subscribers
- Average readership increased by **6%**

We did not achieve our intention to provide an annual report of learning from our Decisions Round-up. It continues to be our long-term aim to offer more consolidated guidance on recurrent practice themes.

#### New bodies

We provided extensive support to grant-aided and special schools, secure accommodation providers and private prisons to help them prepare for their new FOI duties. This group had no prior experience of FOI before becoming subject to it.

With support from the Scottish Government, we made early and regular contact with the new authorities. We produced new *Setting up your FOI function* guidance, providing a step by step approach to preparing for FOI.

We delivered tailored training to the three groups, covering issues such as recognising requests and responding to requests for personal or commercial information. We supported two groups to develop template Guides to Information to assist their adoption of the Model Publication Scheme.

#### Advisory Group of Practitioners

This year we established an Advisory Group of Practitioners to consult with and take advice from on FOI practice areas. We met the group twice this year to receive feedback on the toolkits and other developments, including the new Knowledge Hub FOI Forum.

#### Network groups

We continued to provide support to several established sectoral groups of FOI practitioners. The groups meet quarterly for a lively mix of practice updates, presentations on specific themes and exchange of practice.

This was the second year of the "Part 7" group we established. This group of staff from NDPBs, regulators, etc. has grown rapidly from 43 to 63 members.

#### Self-assessment toolkits

- We completed a full review and reformatted our three self-assessment toolkits in light of feedback from our Advisory Group.
- We produced a new module on *Publishing Information* to support authorities to make practice improvements.
- We are exploring ways to build a community of practice around the toolkit and to provide more information about how the modules are used and could be further developed.



You take concerns raised by the public seriously and are very professional in your responses. You may not appreciate it, but from where I am you are streets ahead of other public bodies and I really appreciate that



FOI requester



**Improving performance**  
We aim to increase our subscribers by 20% by 2020



**Find out more**  
Read our round-ups at [www.itspublicknowledge.info/roundup](http://www.itspublicknowledge.info/roundup)



**Find out more**  
The Commissioner's Strategic Plan is available at [www.itspublicknowledge.info/StrategicPlan](http://www.itspublicknowledge.info/StrategicPlan)



**Find out more**  
Read our guidance for new authorities [www.itspublicknowledge.info/newauthority](http://www.itspublicknowledge.info/newauthority)



**Find out more**  
Want to get involved? Contact us at [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

# Performance Analysis:

## Raising awareness and improving access

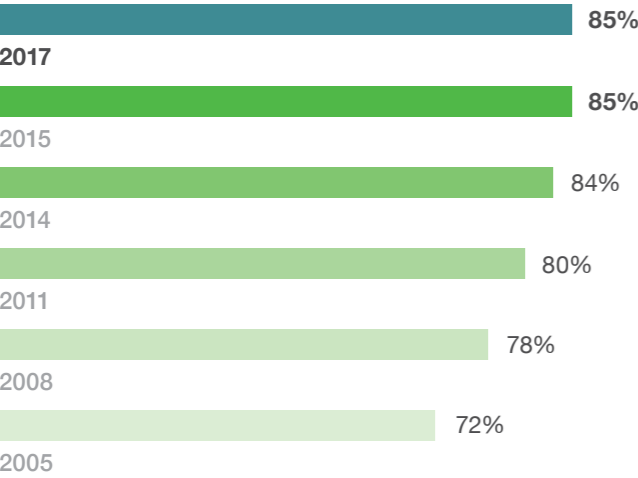
The Commissioner promotes awareness of FOI rights among the public, ensuring people know they have FOI rights and how to use them to access the information they want to see.

### Developing knowledge

We have commissioned public opinion polls since 2005 to measure public awareness of the right to request information from Scottish public authorities.

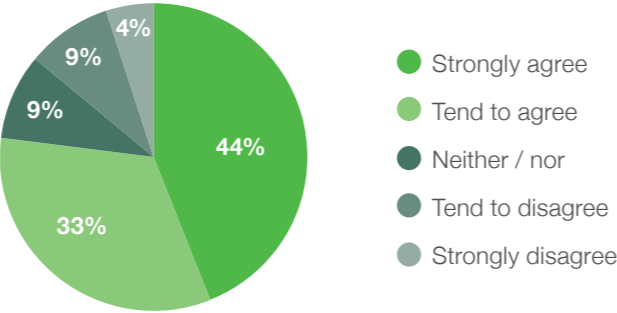
#### Public awareness of FOI

FOI awareness remains at its highest level



#### Publishing information about its work makes people trust public bodies

77% are more likely to trust a public authority that publishes a lot of information about its work



Source: Ipsos MORI 2017

### Raising awareness



In April 2016, in response to research in 2015/16 which showed that awareness of FOI is lowest among younger people, we launched a campaign, in partnership with Young Scot, to ensure that young people in Scotland were aware of their FOI rights. The campaign resulted in:

- Over 40,000 young people receiving information on FOI.
- More than 1,400 young people taking part in an interactive FOI quiz, designed to inform them of their rights.
- More than 1,400 young people entering an awareness-raising competition that we supported.
- A redesign of content on our website, to ensure information about FOI rights was as accessible and appealing as possible.

A second stage of our work to promote FOI to children and young people launched in April 2017, and we are planning more work in this area in future.

### Our Communication Strategy

Our main communication tools are our website and Twitter account, which we use to share knowledge and raise awareness of FOI rights and good practice.

The Commissioner also sends direct communications to stakeholders about important changes or developments in FOI. We set ourselves four performance measures for our 2015-2020 Communication Strategy:

Measure to be achieved by 2020	Progress made in 2016/17
A minimum of 40% of all appeals received annually to be made via the online appeal service	Data from the first four months operation, indicates that this target is likely to be exceeded.
20% increase in the total number of subscribers to content via our website (from 1,017 to 1,220)	We have met this target. The current number of registered subscribers has already risen to 1,230. The increase is attributed to the success of the weekly Decisions Round-up.
20% increase in the number of annual unique website users (from 54,000 to 64,800)	The number of unique (or individual) users increased to 54,979 (a 3% increase over the previous year), but is significantly short of the annual improvement required to meet the four-year target.
Increase in read receipts for communications about important changes or developments in FOI to 75%	We piloted an electronic email service during the year. The average proportion of emails opened, across seven mailings, was 46%, considerably short of the 2020 target. However, this data provides a benchmark.



**Did you know?**  
At 85%, we exceeded our target of 75% of the public being aware of FOI



**What's next?**  
This year we have increased our Twitter following and in 2017/18 we will be using this more often to communicate with stakeholders. Follow us @FOIScotland



**What's next?**  
We'll be exploring more opportunities to promote FOI during the Year of Young People (2018)



**What's next?**  
Further developments in 2017/18 aim to increase the number of unique website users to 58,320. These measures include promotion of FOI rights to young people and improved navigation to website content



**Find out more**  
Read our new communications strategy at: [www.itspublicknowledge.info/guidetoinfo](http://www.itspublicknowledge.info/guidetoinfo)

# Performance Analysis:

## Raising awareness and improving access continued

### Enabling access



#### Online appeal service

- Launched November 2016
- Available 24/7
- Checks for most common problems with validity, alerts the user, and advises how to make appeal valid.
- Provides real time help and advice about making an appeal, even when the office is closed.
- The appeal service is expected to bring efficiency benefits for the Commissioner too. Appeals made via the portal are more likely to be valid at the point of receipt, thus reducing the time we spend on checking an appeal is valid, releasing more resources to investigate appeals.



...found it user-friendly and experienced no problems

As a first-time user, I found the site generally quite easy to navigate...

[I] was clearly directed as to next steps and what was required...

The uploading of documents was very straightforward and efficient

...an improvement on my previous email submission as it was more immediately clear what was required in terms of information

Quotes from users



We set an ambitious target for take up of the new service: a minimum 40% of all applications received annually to be made via the online appeal portal by 2020. The service has already exceeded expectations in the first four months of operation.

#### Consultation: extending FOI

We responded to a key government consultation on whether FOI should be extended to cover Registered Social Landlords (RSLs) who provide social housing. The Commissioner argued that there is a persuasive case for RSLs being subject to FOI. The full response can be read at: [www.itspublicknowledge.info/reports](http://www.itspublicknowledge.info/reports)



Make an appeal online at [www.itspublicknowledge.info/appeal](http://www.itspublicknowledge.info/appeal)

# Performance Analysis:

## Publishing information

The FOI Act doesn't just require public authorities to respond to requests for information. They must also proactively publish information in accordance with a publication scheme, approved by the Commissioner. The Commissioner's Model Publication Scheme is the common framework used by all Scottish public authorities. Each authority publishes a Guide to Information, setting out what information they make available under the Model Publication Scheme and how to access it.

Last year we reported we were shifting our focus away from checking publication scheme adoptions to monitoring the effectiveness of authorities' compliance with the publication scheme duty. From May 2016, we require publication scheme notifications only by new bodies, or bodies which have had a significant change in their structure or constitution. In 2016/17, 89 authorities were required to notify us.

Model Publication Scheme notification 2016/17	Target	Overall
No. of bodies		89
Authorities notified us by the due date	80%	27%
Notification received within 3 months of the due date or authority referred for enforcement action	100%	61%

Our performance against the two targets varied considerably, depending on the type of body due to comply, for example:

- For grant-aided and special schools, private prisons and secure accommodation providers, we achieved 51% performance against the first target and 98% against the second (see more about the support we provided to this group of new bodies at page 29)
- Not one Integration Joint Board (IJB) notified us by its due date, and we achieved only 16% compliance with the second target. This is because we could not identify in sufficient time when the individual IJBs were established and therefore had to comply with the publication scheme duty. All of the IJBs have now notified us that they have adopted the Model Publication Scheme.

We also closed 14 out of 15 older publication scheme cases which related to NDPBs and publicly-owned companies.



**Improving performance**  
We issued our first ever Enforcement Notices this year, all of which related to the failure to adopt a publication scheme. See page 21 for more



**What's next?**  
We will continue to refer for enforcement action any authorities that have not adopted a publication scheme within 3 months of the due date

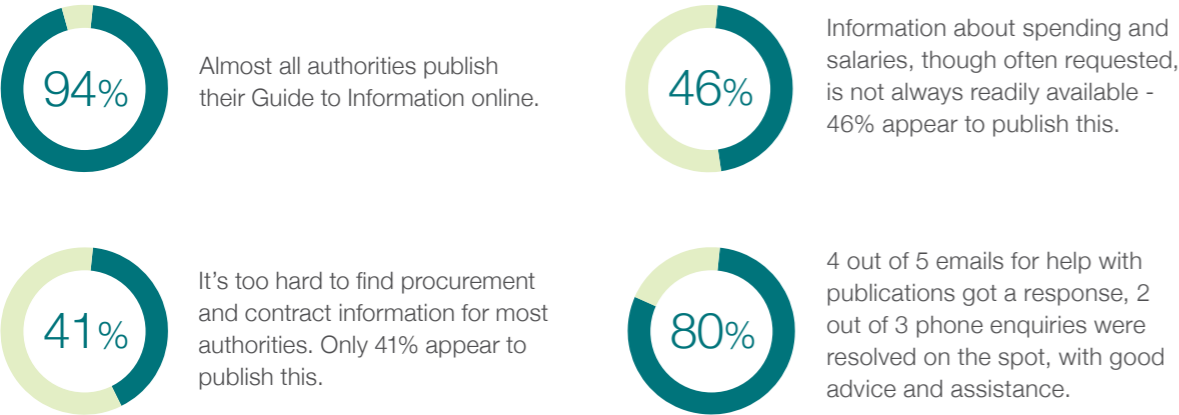
# Performance Analysis:

## Publishing information continued

### Model Publication Scheme monitoring 2016/17

We commissioned a social research company, Craigforth Ltd, to evaluate public authorities' adoption of the Model Publication Scheme. We reported on the first round of their "mystery shopping" monitoring in May 2016.

#### Key Results



#### Learning Outcomes



Publish more information online and offer it in different formats




Plain language is important to help the public find information




It's good practice to give direct links to information in Guides to Information



Advice and assistance is good customer service - it gives the public a positive experience



**Did you know?**  
As in the previous study, variations in the way information is described and the structure of websites continue to present barriers to people looking for information on some authority websites



**Improving performance**  
The Commissioner will follow up the findings with individual authorities, requiring improvements where necessary

**The second round took place in December 2016. This time we tested:**

- How accessible the Guide to Information was.
- How accessible specific types of information were (minutes of meetings, agendas, strategies, plans and information about open data).
- How well the authority gave advice and assistance to enquirers looking for information under the publication scheme.

#### Findings

Does the authority publish information about decision making, specifically: <ul style="list-style-type: none"><li>• minutes of meetings</li><li>• agendas</li><li>• strategies and plans?</li></ul>	Most authorities (91%) published one or more of these online, but only 54% provided all three.
Does the authority maintain its Guide to Information (GTI), specifically, does the GTI contain references to open data and Re-Use of Public Sector Information Regulations 2015?	<ul style="list-style-type: none"><li>• 79% did not refer to open data through their GTI</li><li>• Very few authorities made specific reference to the Re-Use of Public Sector Information Regulations 2015<sup>7</sup></li></ul>
Does the authority provide advice and assistance?	In most cases, where the researchers asked authorities for advice and assistance to find published information, they got a helpful response quickly. In some cases they had to wait or did not receive a response. In just one case a response was incorrect.

<sup>7</sup> Open data was added as a new class of information in May 2016 to support the Scottish Government's Open Data Strategy. The Re-Use of Public Sector Information Regulations 2015 are also a relatively new development. Referring to these in the Guide to Information are indicators that the Guide is up to date.

### Special Report:

#### Proactive Publication

On her last day in office, the Commissioner laid a Special Report, *Proactive Publication: time for a rethink?* before the Scottish Parliament. The report asks whether the publication and dissemination duties in Scottish FOI law are still fit for purpose. Among other issues, the report suggests:

- FOI law gives insufficient weight to publishing information and needs to be updated to meet changing public expectations and technological advances.
- The volume of FOI requests to authorities is increasing and the information landscape is complex, but there are new opportunities to embed access to information into service design and delivery.
- Publication is important for building trust and confidence in public services.
- Access to information law and policy needs to be strategically reviewed to:
  - create a simpler framework for authorities and the public
  - place greater emphasis on publication
  - preserve the right to ask for information as an important protection for the public



**Did you know?**  
The Guide to Information is the index of information published under the publication scheme and where to find it



**Find out more**  
The reports from both rounds of publication scheme monitoring are available at [www.itspublicknowledge.info/research](http://www.itspublicknowledge.info/research)



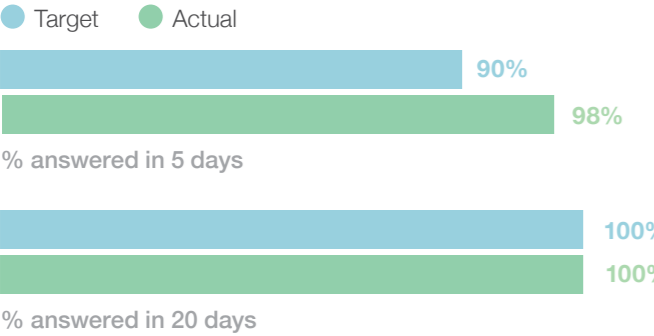
**Improving performance**  
We reviewed our own publication scheme and awarded it an "excellent" rating, meeting our objective

# Performance Analysis: Enquiries

## Enquiry response targets

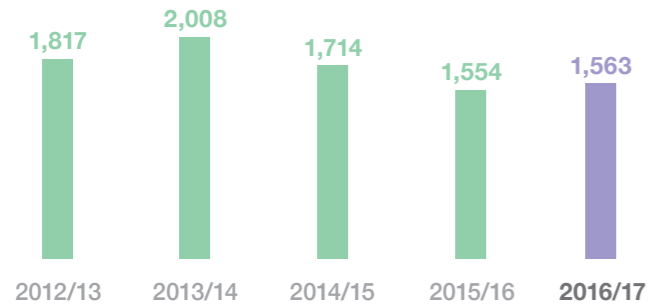
The Enquiries Service is one of the main points of contact for the organisation and anyone with a question about FOI can contact us for advice.

98% of enquiries were answered within 5 days  
We exceeded our target of 90%. In most cases, we answered on the same day.



## Total enquiries by year

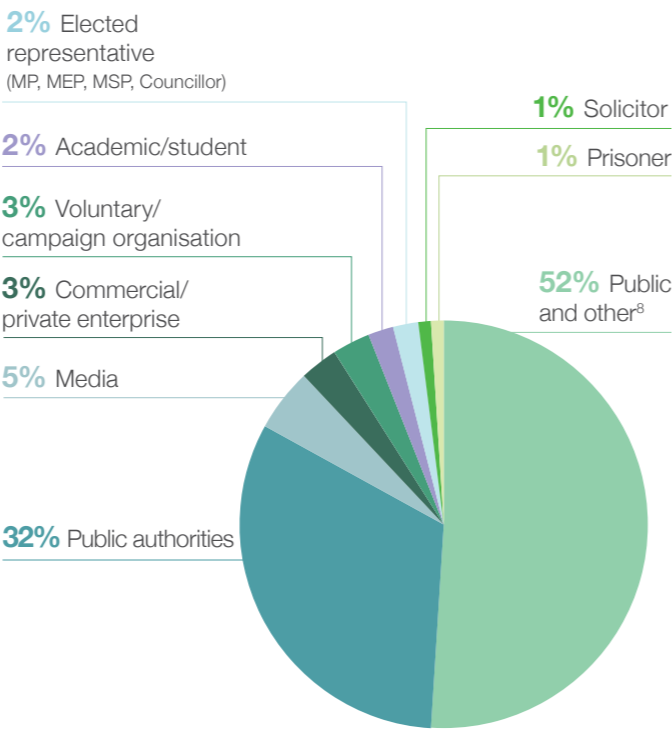
We've answered more than 20,000 enquiries since FOI was introduced in 2005



1,563 The number of enquiries we received in 2016/17 was 1,563, a 0.6% increase on last year.

## Type of enquirer 2016/17

Most of our enquiries are from the public



4% Enquiries from public authorities increased by 4%.

<sup>8</sup> "Public and other" represents all individual members of the public with no identified affiliation to an organisation or group.

**Did you know?**  
Questions about data protection or accessing your own personal information should be put to the UK Information Commissioner (ICO): [www.ico.org.uk](http://www.ico.org.uk)

**Improving performance**  
The number of annual enquiries remains less than the 2013/14 peak. In 2014 we introduced an automated message which redirects callers with a data protection enquiry to the ICO. This helps to ensure that enquiries are quickly directed to the relevant regulator and that our staff focus on the enquiries that are within our remit

# Performance Analysis: Information requests

As a Scottish public authority, we too are subject to FOI law and must respond to requests for information which we hold.

Request for information held by Commissioner	2015/16	2016/17
Brought forward from previous year	0	4
New requests	153	120
FOI Act	152	120
EIRs	1	0
Total requests	153	124
Requests closed	149	117
Information provided in full	14	18
Information partially supplied	18	24
Information not held by the Commissioner	99	59
Information not supplied	18	16
Request withdrawn	8	6
Repeat request	2	0
Request vexatious	0	1
Exempt	7	7
Neither confirm nor deny	0	1
Information request invalid	1	1
No. of requests open at end of year	4	7
No. of times a fee was charged	0	0
Proportion of requests answered within statutory timescales:		
No. of requests answered within statutory timescales	149	117
No. of requests answered outwith statutory timescales	0	0
% answered within statutory timescales	100%	100%
Requests for review	2015/16	2016/17
Brought forward	0	1
Received	3	14
Closed: Internal review upholds original decision in full	2	10
Internal review partially upholds original decision	0	1
Internal review substitutes a different decision	0	1
Request for review invalid	0	2
Total closed	2	14
Carried forward	1	1
Subject Access Request (Data Protection Act)	2015/16	2016/17
	10	20

2016/17	Target	Achieved
% of requests answered within 5 days	60%	66%
% of review requests answered within statutory timescales	100%	100%

The main reason for issuing an “information not held” notice was that the request was misdirected to us. This happened in 48 of the 59 “information not held” cases.

One requester was responsible for 18 of our 20 subject access requests.

We met our target of answering 100% of requests and 100% of requests for review within 20 working days.

If we don't hold information, we point the requester to where they might get it (if we know), or tell them about relevant information we do hold.

**Re-Use of Public Sector Information**  
This year we completed our work to ensure that the Commissioner complies with the Re-Use of Public Sector Information Regulations 2015.

- Published our public task statement.
  - Published our re-use statement.
  - Made all of the information published on the Commissioner's website subject to the Open Government Licence, which gives the right to re-use the information, subject to important conditions.
  - Issued guidance on how to make re-use requests and complaints.
  - Published our Information Asset Register.
- We received no re-use requests in 2016/17.

# Performance Analysis:

## Operational Performance

### Corporate management

The Commissioner routinely reviews and assesses operational performance, ensuring that her office functions as efficiently and effectively as possible.

#### Statutory reporting

The Commissioner's statutory reporting duties to the Scottish Parliament are:

- lay an Annual Report (this document)
- lay audited accounts
- report expenditure on travel, public relations, consultancy, etc. on a quarterly basis, in accordance with the Public Services Reform (Scotland) Act 2010 (the PSRA) reporting requirements.

We complied with all these duties in 2016/17.

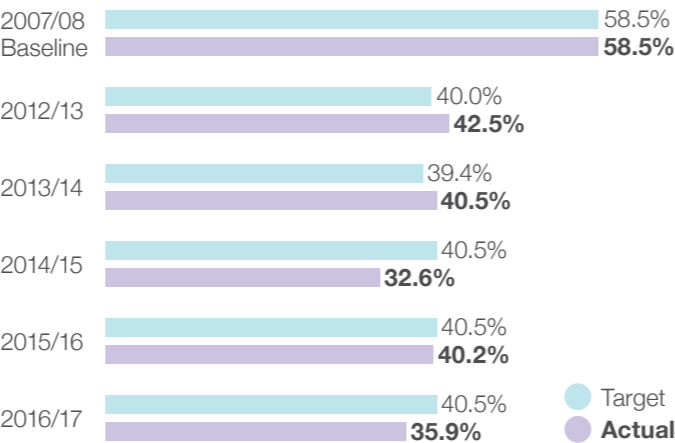
The PSRA also requires the Commissioner to report on steps taken to:

- improve efficiency, effectiveness and economy in the exercise of her functions – the work undertaken to meet this requirement is detailed throughout the report
- promote and increase sustainable growth – this is a challenge for a small, single site organisation and is met through the objectives set out in the Environmental Policy. We aim to manage and, where possible, reduce any impacts on the environment from our activities.

#### Sustainable growth

Although our primary function is to enforce and promote Scotland's freedom of information legislation, our office can make a direct contribution to sustainability through the management of its carbon footprint which has reduced since 2007/8.

##### Carbon Footprint 12 months to 31/03/2017



Although we are a small, single site organisation and have a limited scope to promote and increase sustainable growth, we remain committed to managing, and where possible, reducing further our carbon footprint and to seeking ways to do this.

	2016/17 Performance	Change since 2007/08 baseline set
Total CO2 emissions	35.88 tonnes CO2	38.65% reduction
Building energy emissions	30.90 tonnes CO2	36.02% reduction
Business travel emissions	3.35 tonnes CO2	64.67% reduction
Paper waste sent for recycling	1.51 tonnes CO2	155.93% increase

#### Compliments and Complaints 2016/17

We recorded 68 compliments. A wide range of staff have been complimented on topics including prompt responses, quality of advice given, time taken to respond and standard of work.

Here are a few examples:

"Many thanks for all your help. It was definitely a matter worth pursuing for us"

"Thanks for your help and perseverance with this one"

"Your office is great at making complex legislation understandable to the general public"

"It's encouraging that there are some services which realise what a public service is meant to do. Very helpful throughout"

68 compliments recorded 2016/17

"I very much appreciate your clarification and your guidance"

"Excellent stuff from @FOIScotland"

"I have now read the decision and am entirely satisfied with your findings..."

"Thank you for your... patience during the investigation"



**Find out more**  
The Commissioner's full accounts, quarterly PSRA reports and statement on sustainable growth are published online at: [www.itspublicknowledge.info/financialperformance](http://www.itspublicknowledge.info/financialperformance)

# Performance Analysis:

## Operational Performance

### Corporate management continued

#### Complaints about our service

		Performance Target	Our Achievement
Complaints received	11		
Resolved at front-line	3	95% resolved in 20 days 100% resolved in 40 days	100% resolved in 20 days 100% resolved in 40 days
Investigated	8	95% resolved in 20 days 100% resolved in 40 days	50% resolved in 20 days 100% resolved in 40 days
Upheld	0	Less than 20% of complaints upheld or partially upheld	62.5% not upheld 37.5% partially upheld
Partially upheld	3		
Not upheld	5		

#### Information and Records Management

##### Managing our records

The Commissioner both recognises and promotes good records management, leading by example by making the efficient and secure management of information an ongoing priority. During 2016/17 we effectively managed our records in accordance with the Information and Records Management Policy and Handbook and this was the second year of our revised Key Document procedures. We also completed a review of the website file library and completed 39 Key Document reviews.

We received 11 complaints in 2016/2017

Most complaints concerned an aspect of our working practices and procedures.

# Performance Analysis:

## Finance

#### Financial performance

The Commissioner receives funding through the Scottish Parliamentary Corporate Body (SPCB). The SPCB has the power to approve the Commissioner's budget.

The Commissioner's financial performance is set out in full in her Accountability Report which is published alongside this Performance Report. In summary:

The Commissioner's net expenditure on operating activities for the year ended 31 March 2017 totalled £1,554,000 (2015/16: £1,490,000). This included non-cash items totalling £54,000 (2015/16: £38,000). In addition there was £45,000 (2015/16: £100,000) of capital expenditure, the majority of which related to IT hardware and software. Total net expenditure for the period was, therefore, £1,599,000 (2015/16: £1,590,000).

Cash funding from the SPCB of £1,565,000 (2015/16: £1,561,000) was within the agreed cash budget for the financial year of £1,566,000 (2015/16: £1,563,000).

During 2016/17 the Commissioner defended 3 new legal challenges to formal notices issued by her together with 4 ongoing challenges. Costs of £41,865 were incurred in defending appeals to the Courts.

#### Payment to suppliers

We are committed to the CBI Prompt Payment Code for the payment of invoices for goods and services received which is a voluntary initiative to improve payment performance and support businesses. The aim of the Code is to ensure suppliers are paid within 10 days of the receipt of the invoice and 100% of all undisputed invoices were paid within this time limit. In the case of disputed invoices, 100% were paid within 10 days of the disputes being settled.



**Did you know?**  
We met our target of achieving no more than a 5% variance in spend against budget



Scottish Information  
Commissioner

# Scottish Information Commissioner

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**Independent Auditor's Report:** page 52-53

**Financial Statements:** page 54-65

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# Accountability Report:

## Corporate governance report

### Commissioner’s report

#### Background

1. Our financial statements have been prepared in accordance with paragraphs 5(1) of Schedule 2 to the Freedom of Information (Scotland) Act 2002 (the FOI Act).
2. Rosemary Agnew took up her appointment as Commissioner on 1 May 2012 for a fixed term of six years and demitted her appointment on 30 April 2017. On 1 May 2017, Margaret Keyse was appointed as Acting Commissioner and is the designated Accountable Officer accountable to the Scottish Parliament for the finances of the Scottish Information Commissioner.
3. The Commissioner receives funding through the Scottish Parliamentary Corporate Body which has the power to approve the Commissioner's budget.

#### Senior Management Team

4. For the financial year end 31 March 2017, the Commissioner’s Senior Management Team comprised:
  - Rosemary Agnew, Scottish Information Commissioner
  - Sarah Hutchison, Head of Policy & Information
  - Margaret Keyse, Head of Enforcement
  - David Lowrie, Head of Operational Management
5. From 1 May 2017, the Commissioner’s Senior Management Team comprises:
  - Margaret Keyse, Acting Scottish Information Commissioner and Head of Enforcement
  - Sarah Hutchison, Head of Policy & Information
  - Helen Gardner-Swift, Head of Corporate Services

#### Personal data-related incidents

6. There were no significant personal data related incidents during 2016-17.

#### Register of interests

7. Declarations of Interest for the Senior Management Team are published on the website with their biographies and updated each year. Declarations of Interest of other staff are obtained and held when required.

#### Disclosure of information to auditors

8. As Accountable Officer, as far as I am aware, there is no relevant audit information of which the auditors are unaware. I have taken all reasonable steps that ought to have been taken to make myself aware of any relevant information and to establish that the auditors are aware of that information.

#### Social and community engagement

9. The freedom of information laws give anyone, anywhere in the world, the right to access information held by Scottish public authorities. We engage directly with social and community issues in the ways that we provide support, advice and guidance to requesters and authorities, and through our enforcement work.

#### Provision of information to employees

10. We have adopted the principles of openness and participation in our organisation and place a high level of importance on both informing and consulting staff. We do so by routinely publishing minutes of meetings, providing open access to management papers, through oral and written briefings and by staff meetings and events. Information is only withheld where this can be shown to be justified or where a duty of confidence is owed to a third party.

#### Pension costs

11. The Commissioner and her staff are eligible to become members of the Civil Service pension arrangements. Employees can also opt for a partnership pension with a private sector pension scheme into which the Commissioner makes an employer contribution. Employer contributions are age-related and range from 8%-14.75% of pensionable pay.

#### Audit

12. The Commissioner’s financial statements are audited by auditors appointed by the Auditor General for Scotland in accordance with paragraph 5(2) of Schedule 2 to the FOI Act. Deloitte LLP has been appointed as the Commissioner's auditors for a six-year period from 2017-2023 and has received no fees in relation to non-audit work.

### Statement of Accountable Officer’s responsibilities

13. Under paragraph 5(1) of Schedule 2 to the FOI Act, the Scottish Information Commissioner is required to keep accounts and prepare annual financial statements in respect of each financial year, in accordance with the directions of the Scottish Ministers.
14. The financial statements are prepared on an accruals basis and must give a true and fair view of the state of affairs of the Scottish Information Commissioner and of the net resource outturn, application of resources, changes in taxpayers’ equity and cash flows for the financial year.
15. In preparing the financial statements, the Accountable Officer is required to comply with the requirements of the Financial Reporting Manual (FReM) and in particular to:
  - (i) observe the Accounts Direction including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
  - (ii) make judgements and estimates on a reasonable basis
  - (iii) state whether applicable accounting standards, as set out in the FReM, have been followed, and disclose and explain any material departures in the financial statements
  - (iv) prepare the financial statements on a going concern basis.
16. The Scottish Parliamentary Corporate Body (SPCB) has appointed me as Accountable Officer of the Scottish Information Commissioner. The responsibilities of the Accountable Officer (including responsibility for the propriety and regularity of the public finances) for keeping proper records and for safeguarding assets are set out in the Memorandum to the Accountable Officer of the Scottish Information Commissioner. As Accountable Officer, I confirm the Annual Report and Financial Statements are, as a whole, fair, balanced and understandable and, also, that I am personally responsible for these documents and the judgements required in reaching that conclusion.

### Governance statement

#### Governance framework: scheme of control

17. As Accountable Officer I am responsible for maintaining a sound system of governance. Governance systems must ensure appropriate levels of internal control and support the achievement of the organisation’s aims and objectives, while safeguarding assets and the funds approved by the SPCB for which I am responsible.
18. I have in place a scheme of control, the key features of which are:
  - (i) The Commissioner holds the role of Accountable Officer.
  - (ii) The Commissioner leads a Senior Management Team (SMT) whose membership is the Commissioner and the Heads of Department with overall responsibility for the operation and development of the organisation. Individual members of the SMT have delegated authority to make decisions as set out in the Commissioner’s Scheme of Delegation. The SMT has formal meetings each quarter which focus on governance, and minutes of its meetings are published on the Commissioner’s website at: <http://www.itspublicknowledge.info/home/AboutSIC/Governance/ManagingOSIC.asp>
  - (iii) The SMT also meets weekly on an informal basis to discuss routine operational issues. Any governance-related decisions taken at these meetings are ratified at the quarterly governance meeting.
  - (iv) Day-to-day operational management is the responsibility of individual Heads of Department, their deputies and staff. The managers are responsible for delivering the business to achieve aims and objectives. They report on operational performance and issues to the SMT.
  - (v) External scrutiny is provided by external auditors appointed by the Auditor General for Scotland and the Scottish Information Commissioner's Advisory Audit Board (AAB) as set out in its purpose and objectives at: <http://www.itspublicknowledge.info/home/AboutSIC/Governance/AdvisoryAuditBoard.asp>. In addition, the Commissioner maintains a contract for the provision of an internal audit service with an independent firm.

# Accountability Report:

## Corporate governance report

### continued

Governance statement (cont.)

19. The Scottish Information Commissioner has established governance arrangements. These are detailed in the document “Governance Arrangements” which, together with the supporting document “Governance Reporting Arrangements”, is published on the Commissioner’s website at: <http://www.itspublicknowledge.info/home/AboutSIC/Governance/GovernanceFinance.aspx>.
20. The scheme of governance control is designed to manage rather than eliminate the risk of failure to achieve aims and objectives. Therefore, it can provide only a reasonable and not an absolute assurance of effectiveness. Systems exist and will continue to be developed to identify and evaluate risks and manage them efficiently, effectively, economically and proportionately. Processes within the organisation have regard to guidance to public bodies in Scotland issued by Scottish Ministers and by HM Treasury.

Review and assessment of effectiveness

21. It is part of my Accountable Officer’s responsibilities to review the effectiveness of the scheme of control. My review is informed by:
- (i) Reports and comments made by the external auditors
  - (ii) The work of the SMT
  - (iii) The strategic direction of the organisation
  - (iv) Reports from internal audits and reviews on the adequacy and effectiveness of the scheme of internal control
  - (v) The advice of the AAB in relation to the Commissioner’s risk and internal control measures.
22. In 2015-16 an internal audit of the corporate governance arrangements was carried out by an independent firm of auditors. Their report found that the control environment over corporate governance and risk management arrangements is robust.
23. Compliance with generally accepted best practice principles and relevant guidance on corporate governance has been assessed using an internal control checklist. The checklist is based on that provided within the Scottish Public Finance Manual and a proportionate approach has been adopted, reflecting the relatively small size and simple structure of the Commissioner’s office whilst recognising the wide impact of her duties.

24. Completion of the internal control checklist and the report to the Senior Management Team on the compliance with governance reporting arrangements confirmed that effective controls and systems are in place.

Management of risk

25. There is a Risk Management Policy, which is reviewed annually. The SMT maintains a Strategic Risk Register and a comprehensive Operational Risk Register which are actively managed and updated every quarter and month, respectively, as a minimum.
26. Together, these provide an ongoing system which identifies key risks and evaluates their potential impact on the achievement of strategic and operational objectives, and the control measures in place or needed either to eliminate or mitigate the impact and/or reduce the likelihood of occurrence. The evaluation of risk involves assessing its nature and extent so that effective and affordable control measures can be implemented.

Review of effectiveness of internal control and risk management

27. The Risk Management Policy has been considered by the AAB which confirmed that it provided the Commissioner with appropriate assurance.
28. The Risk Management Policy and Registers have been effective in enabling the SMT to reduce demonstrably the organisation’s risk profile. They also set out target risks which inform priorities when formulating the annual Operational Plan.
29. All matters requiring a formal decision by the SMT must include an assessment of the impact on risk. This, combined with the SMT’s active management of the Risk Registers and the implementation of the governance arrangements, has been effective in embedding risk management in decision making and planning practices.

Significant issues

30. During the financial year to 31 March 2017 and to the date of this statement, no significant control weaknesses or issues have arisen, and no significant failures have arisen in the expected standards for good governance, risk management and control.
31. As Accountable Officer, I authorised these financial statements:

Margaret Keyse  
Accountable Officer

Date:

# Accountability Report:

## Remuneration and staff report

Remuneration report

Remuneration policy

32. The Commissioner’s remuneration is determined by the SPCB. The Commissioner’s salary is reviewed on an annual basis and, where appropriate, uprated in line with the Review Body’s recommendations for the senior civil service pay award.
33. The SMT remuneration is determined by the Commissioner herself, and is subject to the approval of the SPCB.
34. In determining levels of remuneration, account is taken of the need for pay to be set at a level which will ensure the recruitment, retention and motivation of staff, together with the need to ensure affordability and value for money.
35. In practice, the terms and conditions of employment (including remuneration) of the SMT are modelled on those of the SPCB.

Service contracts

36. The SMT holds appointments which are open-ended. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the Civil Service Compensation Scheme.
37. The members of the SMT are not classified as civil servants, but pension benefits are provided through the Civil Service Pension Scheme arrangements and a partnership pension scheme.

Remuneration (including salary) and pension entitlements

38. The following sections provide details of the remuneration and pension interests of the Commissioner and the SMT. The information relating to salary and pension entitlements and fair pay disclosures in the remuneration report and the analysis of staff numbers and costs in the staff report is subject to audit. The other sections in the remuneration report and staff report have been reviewed by the external auditors to ensure they are consistent with the financial statements.

	Salary: full year equivalent		Pension benefits accrued during the year <sup>1</sup>		Total	
	2016-17 £'000	2015-16 £'000	2016-17 £'000	2015-16 £'000	2016-17 £'000	2015-16 £'000
Name and title						
Rosemary Agnew Scottish Information Commissioner	80-85	75-80	32	31	112-117	106-111
Margaret Keyse Head of Enforcement	60-65	60-65	20	30	80-85	90-95
Sarah Hutchison Head of Policy & Information	60-65	60-65	13	23	73-78	83-88
David Lowrie Head of Operational Management	55-60	60-65	23	26	78-83	86-91

<sup>1</sup> The value of pension benefits accrued during the year is calculated as the real increase in pension multiplied by 20 plus the real increase in any lump sum less the contributions made by the individual. The real increases exclude increases due to inflation or any increases or decreases due to a transfer of pension rights.

# Accountability Report:

## Remuneration and staff report

### continued

Remuneration report (cont.)

39. Total remuneration includes salary. It does not include employer pension contributions and the cash equivalent transfer value of pensions.

Median salary ratio

40. Reporting bodies are required to disclose the relationship between the remuneration of the highest paid senior member of staff in their organisation and the median remuneration of the organisation’s workforce:

	2016-17	2015-16
Highest paid staff member (the Commissioner). Salary band £’000	80-85	75-80
Median total remuneration (£)	39,764	38,984
Ratio	2.0	2.1

41. In 2016-17 no employee received remuneration in excess of the Commissioner. Remuneration ranged from £16,549 FTE (gross p.a.) to banded remuneration of £60-65K (2015-16: £17,656 to banded remuneration of £60-65K).

42. No benefits in kind were paid in either 2015-16 or 2016-17.

43.No bonus payments were made in either 2015-16 or 2016-17.

Pension benefits

44.

	Real increase in pension at pension age		Total accrued pension at pension age as at 31 Mar 2016		CETV at 31 March 2017		CETV at 31 March 2016		Real increase in CETV as funded by employer	
	£’000	£	£’000	£	£’000	£	£’000	£	£’000	£
<b>Commissioner</b> Rosemary Agnew	0-2.5	1,874	5-10	9,191	119	118,889	93	93,434	17	16,766
<b>Head of Enforcement</b> Margaret Keyse	0-2.5	1,244	25-30	25,669	370	369,874	345	345,298	8	7,646
<b>Head of Policy &amp; Information</b> Sarah Hutchison	0-2.5	864	20-25	24,894	471	470,625	438	437,800	12	11,677
<b>Head of Operational Management</b> David Lowrie	0-2.5	1,369	10-15	11,934	174	173,805	153	153,158	11	10,949

45. All the above are members of the Principal Civil Service Pension Scheme (PCSPS). As such, there is no automatic lump sum on retirement.

The Cash Equivalent Transfer Value (CETV)

46.A CETV is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member’s accrued benefits and any spouse’s or civil partner’s pension contingently payable depending on the scheme. A CETV is the amount payable by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which the disclosure applies.

47. The figures include the value of any pension benefit in another scheme or arrangement which the individual has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the scheme member as a result of their purchasing additional years of pension service in the scheme at their own cost. CETVs are worked out within the guidelines and framework prescribed by the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

The real increase in CETV

48.CETV movement may comprise a number of components such as the age of the individual, inflation, contributions by the employer and the employee, and performance of the fund where relevant. The real increase in CETV reflects the increase effectively funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the year.

# Accountability Report:

## Remuneration and staff report

### continued

#### Staff report

##### Equality and diversity

49. We support the aims and principles of equality legislation in carrying out our operational functions and employment practices. This means we are committed to our organisation's policies and practices and to ensure that no individual is discriminated against, either directly or indirectly, unlawfully or unjustifiably because of their personal status in relation to:

- (i) age
- (ii) disability
- (iii) gender reassignment
- (iv) marital or civil partnership status
- (v) pregnancy or maternity
- (vi) race (which includes colour, nationality and ethnic or national origins)
- (vii) religion or belief
- (viii) sex
- (ix) sexual orientation

##### Staff costs

	Commissioner	Senior Management Team	Staff	Total	Total
	2016-17 £'000	2016-17 £'000	2016-17 £'000	2016-17 £'000	2015-16 £'000
Salary	78	171	603	852	888
Social Security costs	10	22	67	99	77
Pension costs	20	41	132	193	192
Total	108	234	802	1,144	1,157

51. Analysis by gender of the organisation as at 31 March 2017.

Category	Headcount		
	Female	Male	Total
Scottish Information Commissioner	1	0	1
Senior Managers (Head of Department)	2	1	3
Other Staff	13	6	19
Total	16	7	23

52. The average number of full time equivalent (FTE) persons employed by the SIC during the year was as follows:

	2016-17			2015-16		
	Permanent	Temporary	Total	Permanent	Temporary	Total
	FTE No.	FTE No.	FTE No.	FTE No.	FTE No.	FTE No.
Commissioner	1	0	1	1	0	1
Senior management	3	0	3	3	0	3
Staff	16	1	17	18	0	18
Total	20	1	21	22	0	22

##### Staff turnover

Leavers	1
New start	1

##### Sickness absence

54. The total number of days lost to sickness absence in 2016-17 per full time equivalent member of staff was 5.95 (2015-16: 3.13).

Margaret Keyse  
Accountable Officer

Date:

# Independent Auditor’s Report

## Independent auditor’s report to the Scottish Information Commissioner, the Auditor General for Scotland and the Scottish Parliament

This report is made solely to the parties to whom it is addressed in accordance with the Public Finance and Accountability (Scotland) Act 2000 and for no other purpose. In accordance with paragraph 120 of the Code of Audit Practice approved by the Auditor General for Scotland, we do not undertake to have responsibilities to members or officers, in their individual capacities, or to third parties.

### Report on the audit of the financial statements

#### Opinion on financial statements

We have audited the financial statements in the annual report and accounts of the Scottish Information Commissioner for the year ended 31 March 2017 under the Freedom of Information (Scotland) Act 2002. The financial statements comprise the Statement of Financial Position, the Statement of Comprehensive Net Expenditure, the Statement of Cash Flows, the Statement of Changes in Taxpayers’ Equity and notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and International Financial Reporting Standards (IFRSs) as adopted by the European Union, and as interpreted and adapted by the 2016/17 Government Financial Reporting Manual (the 2016/17 FReM).

In our opinion the accompanying financial statements:

- give a true and fair view in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers of the state of the body's affairs as at 31 March 2017 and of its net expenditure for the year then ended;
- have been properly prepared in accordance with IFRSs as adopted by the European Union, as interpreted and adapted by the 2016/17 FReM; and
- have been prepared in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

#### Basis of opinion

We conducted our audit in accordance with applicable law and International Standards on Auditing in the UK and Ireland (ISAs (UK&I)). Our responsibilities under those standards are further described in the Auditor’s Responsibilities for the Audit of the Financial Statements section of our report. We are independent of the body in accordance with the ethical requirements that are

relevant to our audit of the financial statements in the UK including the Financial Reporting Council’s Ethical Standards for Auditors, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

#### Responsibilities of the Accountable Officer for the financial statements

As explained more fully in the Statement of the Accountable Officer Responsibilities, the Accountable Officer is responsible for the preparation of financial statements that give a true and fair view in accordance with the financial reporting framework, and for such internal control as the Accountable Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

#### Auditor’s responsibilities for the audit of the financial statements

Our responsibility is to audit and express an opinion on the financial statements in accordance with applicable legal requirements and ISAs (UK&I) as required by the Code of Audit Practice approved by the Auditor General for Scotland. Those standards require us to comply with the Financial Reporting Council’s Ethical Standards for Auditors. An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the body's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Accountable Officer; and the overall presentation of the financial statements.

Our objectives are to achieve reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor’s report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK&I) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

#### Other information in the annual report and accounts

The Accountable Officer is responsible for the other information in the annual report and accounts. The other information comprises the information other than the financial statements and our auditor’s report thereon. Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon except on matters prescribed by the Auditor General for Scotland to the extent explicitly stated later in this report.

In connection with our audit of the financial statements in accordance with ISAs (UK&I), our responsibility is to read all the financial and non-financial information in the annual report and accounts to identify material inconsistencies with the audited financial statements and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by us in the course of performing the audit. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

### Report on regularity of expenditure and income

#### Opinion on regularity

In our opinion in all material respects the expenditure and income in the financial statements were incurred or applied in accordance with any applicable enactments and guidance issued by the Scottish Ministers.

#### Responsibilities for regularity

The Accountable Officer is responsible for ensuring the regularity of expenditure and income. We are responsible for expressing an opinion on the regularity of expenditure and income in accordance with the Public Finance and Accountability (Scotland) Act 2000.

### Report on other requirements

#### Opinions on other prescribed matters

We are required by the Auditor General for Scotland to express an opinion on the following matters.

In our opinion, the auditable part of the Remuneration and Staff Report has been properly prepared in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the Performance Report for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers; and
- the information given in the Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Freedom of Information (Scotland) Act 2002 and directions made thereunder by the Scottish Ministers.

#### Matters on which we are required to report by exception

We are required by the Auditor General for Scotland to report to you if, in our opinion:

- adequate accounting records have not been kept; or
- the financial statements and the auditable part of the Remuneration and Staff Report are not in agreement with the accounting records; or
- we have not received all the information and explanations we require for our audit.

We have nothing to report in respect of these matters.

**Pat Kenny**, CPFA  
(for and on behalf of Deloitte LLP)  
110 Queen Street  
Glasgow  
G1 3BX

# Financial Statements 2016-17:

## Financial statements and notes

### Statement of comprehensive net expenditure for the year ended 31 March 2017

	Note	2016-17	2015-16
		£'000	£'000
Income			
Other income	4	1	43
Administrative costs			
Staff costs	5	1,144	1,157
Other administrative costs	7	357	338
Depreciation and amortisation	8, 9	54	38
Net administrative costs		1,555	1,533
Net operating costs		1,554	1,490

All amounts relate to continuing activities.

The accompanying notes on pages 56-63 form an integral part of these financial statements.

### Statement of financial position as at 31 March 2017

	Note	2016-17	2015-16
		£'000	£'000
Non-current assets			
Property, plant and equipment	8	131	158
Intangible assets	9	57	39
Total non-current assets		188	197
Current assets			
Trade and other receivables	10	19	23
Cash and cash equivalents	11	113	132
Current assets		132	155
Total assets		320	352
Current liabilities			
Trade and other payables	12	80	123
Current liabilities		80	123
Assets less liabilities		240	229
Taxpayers' equity			
General Fund	13	217	206
Revaluation Reserve	13	23	23
Taxpayers' equity		240	229

The accompanying notes on pages 56-63 form an integral part of these financial statements.

### Statement of cash flows for the year ended 31 March 2017

	Note	2016-17	2015-16
		£'000	£'000
Cash flows from operating activities			
Net operating costs		1,554	1,490
Adjustments for non-cash items: Depreciation and amortisation	8,9	54	38
Movements in working capital: (Increase) / decrease in trade and other receivables (Decrease) / increase in trade and other payables	10 12	4 (43)	18 10
Net cash outflow from operating activities		1,539	1,424
Cash flows from investing activities			
Purchase of property, plant and equipment	8	10	57
Purchase of intangible assets	9	35	43
Net cash outflows from investing activities		45	100
Total cash outflows from operating and investing activities		1,584	1,524
Cash inflows from SPCB financing activities	3	1,565	1,561
Net (decrease) / increase in cash and cash equivalents		(19)	37
Cash and cash equivalents at beginning of year	11	132	95
Cash and cash equivalents at end of year	11	113	132
Net (decrease)/increase in cash and cash equivalents		(19)	37

The accompanying notes on pages 56-63 form an integral part of these financial statements.

# Financial Statements 2016-17:

## Financial statements and notes

### continued

Statement of changes in taxpayers’ equity for the year ended 31 March 2017

	General Fund	Revaluation reserve	Total reserves	2015/2016 Comparative data
	£’000	£’000	£’000	£’000
Balance at 1 April 2016	206	23	229	158
Net operating cost for the year	1,554	0	1,554	1,490
Net funding	1,565	0	1,565	1,561
Balance at 31 March 2017	217	23	240	229

Notes to the Financial statements

1. Accounting policies

These financial statements have been prepared in accordance with the accounts direction issued by Scottish Ministers under section 19(4) of the Public Finance and Accountability (Scotland) Act 2000 and also in compliance with the principles and disclosure requirements of the Government Financial Reporting Manual (FReM). The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context.

Where the FReM permits a choice of accounting policy, the accounting policy judged to be the most appropriate to the circumstances of the Scottish Information Commissioner in order to provide a true and fair view has been selected.

The particular accounting policies adopted by the Commissioner are described below. They have been applied consistently in dealing with items considered material in relation to the financial statements.

1.1. Accounting convention

These financial statements have been prepared under the historical cost convention modified to account for the revaluation of property, plant and equipment, financial instruments and inventories where material, at their value to the organisation by reference to their current costs.

1.2. Property, Plant and Equipment (PPE)

1.2.1. Recognition

All PPE assets will be accounted for as non-current assets.

1.2.2. Capitalisation

The minimum levels for capitalisation of a PPE asset are:

Leasehold improvements	£10,000 inclusive of irrecoverable VAT
Fixtures, fittings and equipment	£500 inclusive of irrecoverable VAT

1.2.3. Depreciation

Depreciation is provided at rates calculated to write off the valuation of buildings and other PPE assets by equal instalments over their estimated useful lives which are normally in the following ranges:

Leasehold improvements	Over the remaining period of the lease
Furniture and equipment	5 years
Fixtures and fittings	5 years
IT equipment	3 years

1.2.4. Valuation

Assets other than artwork are held at depreciated historic value. Artwork is held at open market value.

1.2.5. Intangible non-current assets

Software and licences are capitalised as intangible non-current assets and amortised on a straight-line basis over the expected life of the asset (3 years).

1.3. Financial instruments

Financial instruments are classified and accounted for according to the substance of the contractual agreement as either financial assets or financial liabilities. The Commissioner has classified its financial instruments as follows:

1.3.1. Financial assets

Cash and cash equivalents, trade receivables, accrued income and amounts receivable are reported in the "Current Assets" category.

1.3.2. Financial liabilities

Trade payables, accruals and creditors are classified as "Current Liabilities".

1.4. Funding receivable

Funding received from the SPCB is credited directly to a prescribed income account in the year to which it relates.

1.5. Value Added Tax (VAT)

The office of the Commissioner is not registered for VAT. All amounts are recorded inclusive of VAT.

1.6. Leases

The Commissioner holds no finance leases. Costs in respect of operating leases are charged to the Statement of Comprehensive Net Expenditure as they fall due.

1.7. Pension costs

The Commissioner is paid through the SPCB’s payroll and is a member of the Principal Civil Service Pension Scheme (PCSPS). Pension benefits for the Commissioner’s staff are also provided through the PCSPS and a partnership pension with a private sector pension scheme.

The PCSPS is an unfunded multi-employer defined benefit scheme with benefits underwritten by the Government. As a result the Commissioner is unable to identify its share of the underlying assets and liabilities and it is, therefore, accounted for as a defined contribution scheme. No liability is shown in the Statement of Financial Position.

A full actuarial valuation was carried out as at 31 March 2012. The PCSPS is financed by payments from the employer and those current employees who are members of the PCSPS and who pay contributions at different rates depending on their salaries and the section of the pension scheme of which they are a member. The rate of employer contributions is typically set following an actuarial valuation and the valuation carried out as at 31 March 2012 recommended an employer contribution rate of 20.9% of pensionable pay.

Government Actuary’s Department has been appointed as the PCSPS actuary. Further details of the PCSPS Actuarial Valuation can be found here:

[www.civilservicepensionscheme.org.uk/media/94676/pcsp-2012-valuation-final-report-final-22072014.pdf](http://www.civilservicepensionscheme.org.uk/media/94676/pcsp-2012-valuation-final-report-final-22072014.pdf)

Further details about the Civil Service pension arrangements can be found here: [www.civilservice.gov.uk/pensions](http://www.civilservice.gov.uk/pensions)

# Financial Statements 2016-17:

## Financial statements and notes continued

### 2. Prior year adjustments

No prior year adjustments have been made.

### 3. Performance against budget

The Commissioner is funded through the SPCB. For the financial year 2016-17 the Commissioner was allocated a funding budget of £1,566,000.

	2016-17 Budget	2016-17 Expenditure	Variance	2015-16 Expenditure
	£'000	£'000	£'000	£'000
Net operating costs	1,616	1,554	62	1,490
Capital expenditure	4	45	(41)	100
Total expenditure	1,620	1,599	21	1,590
Adjustments				
Non-cash items	54	54	0	38
Working capital (including cash)	-	20	(20)	9
Cash funding from SPCB	1,566	1,565	1	1,561

### 4. Income from all sources

	2016-17	2015-16
	£'000	£'000
Recovery of court costs	0	41
Other income	1	2
Total	1	43

### 5. Breakdown of staff costs

	Commissioner	Senior Management Team	Staff	Total	Total
	2016-17	2016-17	2016-17	2016-17	2015-16
	£'000	£'000	£'000	£'000	£'000
Salary	78	171	603	852	888
Social Security costs	10	22	67	99	77
Pension costs	20	41	132	193	192
Total	108	234	802	1,144	1,157

Salaries include basic salaries and are adjusted for accrued holiday pay. They do not include employee National Insurance or Pensions contributions.

# Financial Statements 2016-17:

## Financial statements and notes continued

### 6. Pension costs

For 2016-17 employer's contributions of £169,412 were payable to the PCSPS at one of four rates in the range 20.0% to 22.1% of pensionable pay, based on defined salary bands. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the scheme. There were no outstanding scheme contributions as at 31 March 2017 (2015-16: £NIL).

On death, pensions are payable to the surviving spouse at the rate of half the member's pension. On death in service, the scheme pays a lump sum benefit of at least twice pensionable pay, depending on the scheme joined within PCSPS, and also provides a service enhancement on computing the spouse's pension. The enhancement depends on the length of service and cannot exceed ten years. Medical retirement is possible in the event of serious ill health. In this case, pensions are brought into payment immediately without actuarial reduction and with service enhanced as for widow(er) pensions.

One employee has opted for a partnership pension with a private sector pension scheme into which the SIC made an employer contribution of £4,026 in 2016-17. Employer contributions are age-related and range from 8% to 14.75% of pensionable pay.

### 7. Other administrative costs

	2016-17	2015-16
	£'000	£'000
Property costs	94	87
Research and promotion	40	34
Administration costs	157	137
Legal costs for court hearings	42	59
Travel expenses	11	10
Audit fees	13	11
Total	357	338

Included within Administration costs is £1,617 (2015-16: £1,617) equipment rental costs in association with operating leases.

### 8. Property, plant and equipment

	Leasehold buildings and improvements	Artwork	Fixtures, fittings and equipment	IT Equipment	Total
	£'000	£'000	£'000	£'000	£'000
Cost or valuation					
At 1 April 2016	214	38	125	184	561
Additions	0	0	2	8	10
Revaluations	0	0	0	0	0
Disposals	0	0	(2)	(35)	(37)
At 31 March 2017	214	38	125	157	534
Depreciation					
At 1 April 2016	152	0	105	146	403
Charge for the year	13	0	5	19	37
Disposals	0	0	(2)	(35)	(37)
At 31 March 2017	165	0	108	130	403
Net book value as at 31 March 2017	49	38	17	27	131
Net book value as at 31 March 2016	62	38	20	38	158

The SIC's artwork was valued on 7 May 2013 by scotlandart.com and on 3 May 2013 by David Mach Limited, independent art dealers. The Commissioner considers the valuation to be appropriate as at 31 March 2017. The basis of valuation used was open market value and the profit was transferred to the revaluation reserve. No other assets have been revalued.

# Financial Statements 2016-17:

## Financial statements and notes

continued

9. Intangible assets

Intangible assets comprise software and licences.

	2016-17
	£'000
Cost	
At 1 April 2016	329
Additions	35
Revaluations	0
Disposals	0
At 31 March 2017	364
Amortisation	
At 1 April 2016	290
Charge for the year	17
Disposals	0
At 31 March 2017	307
Net book value as at 31 March 2017	57
Net book value as at 31 March 2016	39

10. Trade and other receivables

	2016-17	2015-16
	£'000	£'000
Amounts falling due within one year		
Prepayments and accrued income	19	23
Receivable within one year	19	23

11. Cash and cash equivalents

	2016-17	2015-16
	£'000	£'000
Balance at 1 April 2016	132	95
Net change in cash and cash equivalent balances	(19)	37
Balance at 31 March 2017	113	132
Cash held at commercial banks	113	132

12. Trade and other payables

	2016-17	2015-16
	£'000	£'000
Amounts falling due within one year		
Trade payables	34	34
Accruals and deferred income	46	89
Total	80	123

13. Capital and reserves

13.1. General fund

	2016-17	2015-16
	£'000	£'000
As at 1 April 2016	206	135
Net expenditure for the year	1,554	1,490
Funding from the SPCB	1,565	1,561
As at 31 March 2017	217	206

13.2. Revaluation reserve

	2016-17	2015-16
	£'000	£'000
Revaluation reserve	23	23

14. Operating leases

Intangible assets comprise software and licences.

	2016-17
	£'000
Buildings	
Not later than one year	50
Later than one year and not later than 5 years	146
Later than five years	0
Other	
Not later than one year	2
Later than one year and not later than 5 years	3
Later than five years	0

15. Capital commitments

There were no contracted capital commitments as at 31 March 2017 (2015-16: £NIL).

16. Contingent liabilities disclosed under IAS 37

There are no contingent liabilities as at 31 March 2017.

17. Related party transactions

The Commissioner receives her funding from the SPCB following an annual Parliamentary budget approval process. The SPCB is regarded as a related party.

Neither the Commissioner, nor any of her staff, has undertaken any material transactions with either the SPCB or the office of the SIC during the year.

18. Post reporting year events

No event has occurred since the date of the balance sheet which materially affects the financial statements.

19. Financial instruments

Financial assets are carried in the balance sheet at amortised cost. Their fair value can be assessed by calculating the present value of the cash flows that will take place over the remaining period of the instrument, using the assumption that the fair value of trade and other receivables is taken to be the invoiced or billed amount.

**Credit risk** - the Commissioner receives funding on a monthly basis and restricts cash holdings to a minimum.

**Liquidity risk** - the Commissioner does not have any external borrowings.

**Market risk** - Changes in market interest rates influence the interest on borrowings and on interest receivable on surplus funds invested. The Commissioner does not rely on interest receivable as its key source of income.

# Financial Statements 2016-17:

## Financial statements and notes continued

### Appendix: Direction by the Scottish Ministers

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1. The Scottish Ministers, in pursuance of paragraph 5 of Schedule 2 of the Freedom of Information (Scotland) Act 2002, hereby give the following direction.
2. The statement of accounts for the financial year ended 31 March 2006, and subsequent years, shall comply with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FReM) which is in force for the year for which the statement of accounts are prepared.
3. The accounts shall be prepared so as to give a true and fair view of the income and expenditure and cash flows for the financial year and of the state of affairs at the end of the financial year.
4. The direction shall be reproduced as an appendix to the statement of accounts. The direction given on 20 April 2004 is hereby revoked.

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**Signed by the authority of the Scottish Ministers**  
Dated 1 September 2006